

*Note P.C. Co
Original
for U.S. Court*

No.

In the District Court of the United States for the Eastern
District of Pennsylvania.

THE UNITED STATES OF AMERICA, PETITIONER,
v.
MOTION PICTURE PATENTS COMPANY AND OTHERS,
DEFENDANTS.

ORIGINAL PETITION.

JOHN C. SWARTLEY,
United States Attorney.

GEORGE W. WICKERSHAM,
Attorney General.

JAMES A. FOWLER,
Assistant to the Attorney General.


EDWIN P. GROSVENOR,
Special Assistant to the Attorney General.

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In the District Court of the United States for the
Eastern District of Pennsylvania.

THE UNITED STATES OF AMERICA, PETITIONER,	} No. —.
v.	
MOTION PICTURE PATENTS COMPANY AND others, defendants.	

ORIGINAL PETITION.

To the honorable judges of the District Court of the United States for the Eastern District of Pennsylvania, sitting in equity:

The United States of America, by John C. Swartley, its attorney for the eastern district of Pennsylvania, acting under the direction of the Attorney General, brings this proceeding in equity against Motion Picture Patents Company, General Film Company, Biograph Company, Thomas A. Edison (Inc.), Essanay Film Manufacturing Company, the Kalem Company (Inc.), George Kleine, Lubin Manufacturing Company, Melies Manufacturing Company, Pathé Frères, the Selig Polyscope Company, the Vitagraph Company of America, Armat Moving Picture Company, Frank L. Dyer, Henry N. Marvin, J. J. Kennedy, William Pelzer, Samuel Long, J. A. Berst, Siegmund Lubin, Gaston Melies, Albert E. Smith, George K. Spoor, and W. N. Selig.

The defendants above-named, engaged in interstate and foreign commerce in motion pictures, films, cameras, exhibiting machines and other articles and apparatus used in the motion picture art, are violating the provisions of the act of

Congress passed July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," and this proceeding is instituted to prevent and restrain the hereinafter particularly described agreements, contracts, combinations, and conspiracies in restraint of, and restraints upon, interstate and foreign trade in such articles, the attempts to monopolize and the contracts, combinations, and conspiracies to monopolize, and the existing monopolizations of part of trade and commerce among the several States in such commodities.

On information and belief, your petitioner alleges and shows:

I.

Motion Picture Patents Company is a corporation organized under the laws of New Jersey, with its principal offices at 80 Fifth Avenue, New York City.

General Film Company is a corporation organized under the laws of the State of Maine, with its principal offices at 200 Fifth Avenue, New York City.

Thomas A. Edison (Inc.) is a New Jersey corporation, the successor to all the rights and privileges of the Edison Manufacturing Company, also a New Jersey corporation. The principal offices of Thomas A. Edison (Inc.) are located at Orange, N. J.

Biograph Company is a corporation organized under the laws of New Jersey, with its principal offices in New York City.

Essanay Film Manufacturing Company is a corporation organized under the laws of the State of Illinois, with its principal offices at Chicago, Ill.

Kalem Company (Inc.) is a corporation organized under the laws of the State of New York, with its principal offices at New York.

Lubin Manufacturing Company is a corporation organized under the laws of the State of Pennsylvania, with its principal offices at Philadelphia.

Melies Manufacturing Company is a corporation organized under the laws of the State of New York, with its principal offices at New York City.

Pathé Frères is a corporation organized under the laws of the State of New Jersey, with its principal offices at New York City.

Selig Polyscope Company is a corporation organized under the laws of the State of Illinois, with its principal offices at Chicago.

Vitagraph Company of America is a corporation organized under the laws of the State of New York, with its principal offices at Brooklyn, New York.

Armat Moving Picture Company is a corporation organized under the laws of West Virginia, with offices in the city of Washington, D. C.

Said defendants will be hereinafter referred to as "corporation defendants" and "defendants."

The individuals made defendants herein and hereinafter called "individual defendants" and "defendants" have been and now are officers and directors of the corporation defendants as hereinafter stated, and as such officers and directors have participated and do now participate in the management and direction of the business of the corporation defendants, and have been and are now responsible therefor.

Frank L. Dyer has been since its organization president and a director of Motion Picture Patents Company and a director of General Film Company since the incorporation of the latter company. He is president of Thomas A. Edison (Inc.) and was president or vice president of its predecessor, Edison Manufacturing Company, during the period hereinafter mentioned.

Henry N. Marvin has been since its organization and is now vice president and a director of Motion Picture Patents Company. He is vice president of the Biograph Company, and held that office during the period hereinafter mentioned.

J. J. Kennedy has been since its organization and is now treasurer and a director of Motion Picture Patents Company, and president and a director of the General Film Company since the incorporation of the latter company. He is also president of the Biograph Company and held that office during the period hereinafter mentioned.

William Pelzer has been for several years, and is now, secretary and a director of the Motion Picture Patents Company, and secretary of the General Film Company since the incorporation of the latter company. He is also an officer of Thomas A. Edison (Inc.) and held that office during the period hereinafter mentioned.

Samuel Long is now and has been since its incorporation treasurer and a director of the General Film Company. He is president and a director of Kalem Company and held that office during the period hereinafter mentioned.

J. A. Berst is now, and has been since its incorporation, a director of the General Film Company. He is one of the officers of and interested in Pathé Frères and held that office during the period hereinafter mentioned.

Siegmund Lubin is now, and has been since its incorporation, a director of the General Film Company, and he is president and a director of the Lubin Manufacturing Company and held that office during the period hereinafter mentioned.

Albert E. Smith is now, and has been since its incorporation, a director of the General Film Company. He is president and a director of Vitagraph Company of America and held that office during the period hereinafter mentioned.

George K. Spoor is now, and has been since its incorporation, a director of the General Film Company. He is president and a director of Essanay Film Manufacturing Company and held that office during the period hereinafter mentioned.

W. N. Selig is now, and has been since its incorporation, a director of the General Film Company, and he is president, a director, and stockholder of the Selig Polyscope Company, and held that office during the period hereinafter mentioned.

George Kleine is an individual residing in Chicago, Ill., doing business in his own name. He has been vice president and a director of General Film Company since its incorporation.

Gaston Melies is now, and has been since its incorporation, a director of the General Film Company, and he is also president of Melies Manufacturing Company, having held that office since its incorporation.

II.

The object of this suit is to remove the restraints which defendants herein have imposed upon trade and commerce in machines, appliances, and apparatus relating to the motion-picture art and upon persons engaged in such trade and commerce.

A moving picture or a picture of an object in motion in reality consists of a long series of consecutive snap shots, or instantaneous pictures, taken one after the other of the object the movement of which it is desired to portray. These pictures are recorded at such brief intervals, 16 per second, that in any two consecutive pictures there is no perceptible change in the position of the object which is in motion. The result is that when the series of pictures is thrown rapidly upon a screen by means of a projecting machine the illusion of movement is produced. The eye in

reality looks upon a swift succession of instantaneous photographs but is deceived into believing that it is seeing actual movement.

Persons engaged in trade and commerce in these appliances may be divided into three classes: (1) Manufacturers of moving picture cameras, films, and projecting or exhibiting machines; (2) rental exchanges doing a wholesale or jobbing business in distributing these machines and films to the exhibitors; (3) exhibitors of pictures or theatre owners.

With the development of the motion-picture business in the last 20 years, numerous patents relating to the motion-picture art have been issued by the United States. Some of these patents have related to the mechanism of moving picture cameras or have been patents for improvements in said mechanism; many patents have been issued relating to projecting or exhibiting machines and many more for improvements in said machines. Some of these patents have been sustained by the courts while some have been held invalid either by reason of their infringing other patents or because they related to matters not properly patentable.

Many important factors, besides the character of the camera and projector, enter into the production of a good motion picture. The quality and composition of the sensitized, translucent strip of celluloid film used in the camera, known as the negative film; the perforating of the negative film with mathematical precision before it is placed in the camera and exposed; the developing of the negative, the developing and printing of the positive film from the negative are all important elements to the perfection of which years of constant experimenting and unremitting research have been devoted.

Of all commerce relating to the motion-picture art the commerce in positive motion-picture films is by far the most considerable. Between two and one-half and three million feet of pictures are printed every week by the manufacturers and

distributed to thousands of exhibitors all over the United States. The patrons of these theaters generally demand a daily change of the entire picture program, and therefore it is essential to every exhibitor that the source of supply of pictures be at all times open and unrestrained.

Within the last ten years the moving-picture business has reached enormous proportions. It is probably true that a sum greatly in excess of \$100,000,000 has been invested in the different branches of the business.

In the year 1908 and prior thereto there were ten manufacturers or importers of moving pictures in the United States; that is to say, there were that number of companies which were producing or importing reels of motion pictures and selling and shipping them to exchanges scattered throughout the United States, the latter in turn distributing to exhibitors all over the country. There were at that time some 125 to 150 rental exchanges; and 6,000 or more exhibitors in the United States.

In this commerce in positive films or moving pictures, the manufacturers at that time competed with each other for the business of the exchanges, and all the exchanges competed for the business of the exhibitor. There were also a number of manufacturers of cameras and of projecting machines competing with each other.

The ten manufacturers of films and their respective places of business from which they sold and shipped as aforesaid were the following:

American Mutoscope and Biograph Company, New York City, a New Jersey corporation, now known as the Biograph Company.

Edison Manufacturing Company, Orange, N. J., a New Jersey corporation, predecessor of Thomas A. Edison (Inc.).

Essanay Film Manufacturing Company, Chicago, an Illinois corporation.

Kalem Company, New York City, a New York corporation.

George Kleine, Chicago, a large importer of films, representing nine foreign companies.

Lubin Manufacturing Company, Philadelphia, Pa., a Pennsylvania corporation.

George Melies Manufacturing Company, Chicago, Ill., an Illinois corporation, an important importer of foreign films, and also a producer of American films.

Pathé Frères, New York City (factory, Bound Brook, N. J.), a New Jersey corporation, an importer of films and an important producer of domestic films.

Selig Polyscope Company, Chicago, an Illinois corporation.

Vitagraph Company of America, Brooklyn, N. Y., a New York corporation.

All these producers of positive moving-picture films were engaged in shipping and distributing their films throughout the United States to the rental exchanges of which, as stated above, there were between 125 and 150 in the country. These rental exchanges, in turn, distributed the films to the thousands of exhibitors, and in so doing were engaged in interstate commerce, as practically every rental exchange had many customers located in other States than the State in which the rental exchange was situated.

At the time mentioned, and prior thereto, keen competition existed in the motion-picture business and commerce relating thereto. A theater owner or exhibitor was able to buy a projecting machine from the Biograph Company, the Armat Company or other manufacturers, and exhibit thereon the moving pictures of any manufacturer. He could buy foreign films imported by said Kleine or George Melies Company, or American films from any one, or from all of the manufacturers of films above named. Interstate and foreign

commerce in films, moving picture cameras, projectors and other appliances relating to the art was unrestrained by any combination of manufacturers. At that time films were not leased but sold by the manufacturers to the rental exchanges. The latter in turn leased but did not sell them to the exhibitors.

III.

MOTION PICTURE PATENTS COMPANY.

In the year 1908 the defendants determined to destroy competition between them, to monopolize commerce relating to the motion-picture art, to exclude all others, and thereafter to carry on said commerce according to the terms of the unlawful combination which they were to create. Briefly stated, the combination was to take the following form: Defendants were to organize a company which should do no business and hold no property other than certain letters patent which were to be transferred to it by the defendants and others. This company was to acquire all patents owned by defendants and all other patents relating to the motion-picture art.

Each of the 10 manufacturers was to take from this new Patents Company a license to produce and lease motion pictures. These license agreements were to be all alike and their terms were to be arrived at by agreement of all defendants before the patents were assigned by them to the new company. In the license agreements were to be incorporated conditions and restrictions not authorized by the patent laws and regulating the conduct of the business of the manufacturers in every detail. Under these agreements they were all to do business in exactly the same manner. They were to lease films and no longer sell them; they were to lease at uniform and noncompetitive prices and only to such rental exchanges as should obtain a license from the

new Patents Company and should agree to handle only defendants' films and to sublease only to exhibitors licensed by the Patents Company. No exhibitor was to be furnished films who did not agree not to display films of any manufacturer other than defendants and not to use projecting machines not licensed by the Patents Company. Defendants intended by virtue of these agreements to acquire the power to determine who should engage in business as a producer of films and who should be excluded from that business, who should continue to operate a rental exchange and whose rental-exchange business should be destroyed, who should remain an exhibitor and who should close his theater, who should in the future open a new motion-picture theater and who should be barred from so doing. The intent of defendants in forming the new company and in entering into the license agreements was to control, restrain, and monopolize all branches of commerce among the States of the United States and with foreign nations relating to the motion-picture art, and to exclude others therefrom.

Accordingly, with the unlawful purposes just mentioned, the defendants, acting together, incorporated under the laws of New Jersey, September 8, 1908, Motion Picture Patents Company (hereinafter called the "Patents Company"), with a capital stock of \$100,000.

The articles of incorporation declare the purposes of Motion Picture Patents Company as follows:

The objects for which this corporation is formed are to acquire by purchase, lease, payment of royalties or otherwise, letters patent, inventions and improvements in materials, processes and apparatus relating to the production of negatives and positives for motion pictures, and also relating to the photographing, developing, reproducing, projecting, and exhibiting of scenes and objects at rest and in motion;

to mortgage, sell, lease, dispose of by agreement or otherwise, such letters patent, licenses under letters patent, and improvements, and to license others to use the inventions covered by the said letters patent and to use such improvements; to purchase, hold, sell and convey such real and personal property as shall be lawful and adapted to the requirements of the business of the company.

The certificate of incorporation of the Motion Picture Patents Company, hereinafter called the Patents Company, is attached hereto as a part of this petition marked Exhibit 1.

On December 18, 1908, at a meeting in New York City attended by all the individual defendants, and all the corporation defendants being represented except the Melies Manufacturing Co., defendants, with the unlawful purposes above mentioned, executed (a) preliminary agreements for the assignment of the patents to the Patents Company, and (b) nine license agreements with the Patents Company, one being concluded by each of the manufacturers (except Melies Co., which signed a similar agreement on a later day) with the Patents Company. The terms of all these agreements had been arranged beforehand at numerous conferences between the manufacturers.

On the same day, according to their previous agreement, defendants elected the following officers and directors of the Patents Company:

President, Frank L. Dyer, also vice president of Edison Manufacturing Company.

Vice president, H. N. Marvin, also vice president of Biograph Company.

Treasurer, J. J. Kennedy, also president of Biograph Company.

Secretary, George T. Scull, an attorney of the Edison Manufacturing Company.

These officers have at all times since its incorporation constituted the entire board of directors of the Patents Company, except that William Pelzer, an officer of Thomas A. Edison (Inc.), has been for some time past and is now secretary and director in place of George F. Scull.

All of the stock of the Patents Company, except the four qualifying shares held by the four directors, has been owned ever since its organization, one half by the Edison Manufacturing Company and its successor, Thomas A. Edison (Inc.), and the other half by the Biograph Company, as provided in the preliminary agreements for the assignment of the patents to be next described.

IV.

PRELIMINARY AGREEMENTS FOR THE ASSIGNMENT OF THE PATENTS.

There were four of these agreements, all executed as above stated, December 18, 1908, each agreement being entered into by one of the following companies with the Patents Company:

1. Edison Manufacturing Company,
2. Biograph Company,
3. Armat Moving Picture Machine Company, and
4. Vitagraph Company of America.

These agreements are identical as to all the essential features. A copy of the Edison agreement, dated December 18, 1908, is attached hereto as a part of this petition and marked Exhibit 2.

After reciting that the Edison Company owns Reissues Letters Patent Nos. 12037 and 12192 and that the Edison Company desires to acquire \$50,000 of the \$100,000 authorized capital stock of the Patents Company, in consideration of the assignment of the patents last named, and after further reciting that the Patents Company has acquired or

will acquire certain patents (naming them) from the Vitagraph Company of America, Biograph Company, and the Armat Company, and that the Patents Company contemplates deriving royalties of three kinds (1) from manufacturers of projecting machines licensed under the patents by the Patents Company (machine royalties), (2) from exhibitors, for the use of projecting machines licensed under the patents by the Patents Company (exhibitors' royalties), and (3) from manufacturers and importers of motion-picture films licensed under Reissues 12037 and 12192 above named (film royalties), the Edison preliminary agreement provides:

(1) The Edison Company agrees to assign reissue patents 12037 and 12192 and the right to sue for past infringement, and the Patents Company agrees to issue 500 shares of stock aggregating \$50,000. (Paragraphs 9 and 10.)

(2) The Edison Company agrees not to pledge, sell, or dispose of its capital stock in the Patents Company, and to deposit its certificates with a trust company, to be named by the Patents Company, as trustee, and to instruct the said trustee not to release, transfer, or return the said certificates so deposited without the consent of the Biograph and Armat Companies. (Paragraph 14.)

(3) After deducting from the machine royalties a royalty of \$1 a machine, to be paid the Vitagraph Company, and after deducting from the gross exhibitors' royalties 24 per cent for payment to the licensed manufacturers and importers of motion pictures other than the Biograph and Edison Companies, and after deducting the expenses, the balance is to be divided as follows:

(a) To the Edison Company shall be assigned and paid an amount equal to the net film royalties.

(b) The remainder up to an amount equal to the net film royalties, shall be assigned and paid to the Biograph Company and the Armat Company, respectively, in the proportion

of two-thirds to the Biograph Company and one-third to the Armat Company.

(c) If any balance remains after the foregoing payments, it shall be divided and paid to the Edison Company, the Biograph Company, and the Armat Company in the proportion of one-half to the Edison Company, one-third to the Biograph Company, and one-sixth to the Armat Company. (Paragraph 12.)

(4) Provision is made for the continuation of the agreement beyond August, 1914, the date of the expiration of the patents which the Edison Company assigns, for it is provided that on August 13, 1915, one year after the expiration of the patents, and at the end of each year thereafter, the Patents Company shall pay to the trustee who holds its certificates of stock all of its net profits for the preceding year, consisting of net machine royalties, net exhibitors' royalties, and "the net sum of any royalties which the Patents Company may collect in lieu of the present film royalties" as a dividend upon the capital stock of the Patents Company, and will instruct the trustee to divide the said dividends and to pay to the Edison Company therefrom an amount equal to one-half of such dividend. (Paragraph 13.)

(5) The agreement may be terminated—

(a) For wilful and continued breach of its terms by either of the parties.

(b) If the Patents Company becomes bankrupt or ceases doing business.

(c) If the Patents Company is dissolved voluntarily or otherwise.

(d) If its charter is repealed.

Upon termination of the agreement for any of the foregoing causes, all the right in Patents 12037 and 12192 shall be reassigned to the Edison Company by the Patents Company. (Paragraph 15.)

The preliminary agreement of the Biograph Company with the Patents Company is identical with that executed by the Edison Company, except that it provides for the assignment of different patents, and also provides that the Biograph Company shall retain the right (without the payment of any royalty to the Patents Company), to practice the inventions described in the patents which it assigns. This agreement, like the Edison agreement, stipulates that upon its termination the Patents Company shall reassign the patents to the Biograph Company.

The Armat agreement is similar except that the Armat Company receives no stock in the Patents Company as a consideration for the transfer of its patents. Like the others it contains a provision for a continuance of the arrangement beyond 1914, and for a reassignment of the patents by the Patents Company to the Armat Company if the agreement is terminated for any of the reasons above stated.

In the Vitagraph agreement the Vitagraph Company agrees to assign six patents and the right to sue for past infringement, but it reserves the right to practice the inventions described in said patents without the payment of any royalty to the Patents Company. The Patents Company agrees that it will not grant any license to manufacture exhibiting or projecting machines under any patents owned by it and covering such machines unless such licensee shall also accept a license to manufacture and sell exhibiting and projecting machines under the Vitagraph patents whether or not such licensee may thereafter make use of any of the inventions covered by said Vitagraph patents. The Patents Company agrees to pay a royalty of \$1 on each machine containing the inventions described in one or more of the Vitagraph patents, a royalty of \$1 when the machine is capable of exhibiting by transmitted light, and a royalty on other kinds of machines.

It is provided that the agreement shall continue until the expiration of all the Vitagraph patents. Upon the termination of the agreement for any of the causes named, the Patents Company shall reassign the patents to the Vitagraph Company.

V.

THE MANUFACTURERS' LICENSE AGREEMENTS ENTERED INTO
WITH THE MOTION PICTURE PATENTS COMPANY.

On the same day, December 18, 1908, with the unlawful purposes above mentioned, each of the ten manufacturers named on pages 7-8, *supra* (except the Melies Company, whose president joined later and formed another company), hereinafter called Patents Company, licensees, concluded with the Motion Picture Patents Company a license agreement, each license being practically identical with every other license. The terms of these license agreements had been determined at numerous earlier conferences between defendants. Each agreement regulated in every detail the manner in which the manufacturer should do business, which was to be the same for all the manufacturers. Each agreement licensed the manufacturer to manufacture and use moving-picture cameras embodying the inventions of the patents and to "manufacture, print, and produce positive motion pictures embodying the inventions of said reissued Letters Patent No. 12192 and to *lease* the same in the United States * * *." These agreements were licenses under the camera and film patents and are to be distinguished from the licenses to the manufacturers of exhibiting machines to be later described.

A copy of the license agreement dated December 18, 1908, between the Motion Picture Patents Company and the American Mutoscope & Biograph Company, now named the Biograph Company, is attached hereto as a part of this petition, marked "Exhibit 3." This agreement, substan-

tially identical with the eight other license agreements executed the same day, provides, in brief:

1. The licensee—that is, the manufacturer of the motion-picture film—is licensed to lease the film only on condition that it be used in exhibiting or projecting machines licensed by the licensor.

2. The licensee agrees that he will use exclusively sensitized film manufactured by a manufacturer authorized by the licensor, and that he will buy all his film from that manufacturer. (Sec. 4.) This refers to the Eastman Kodak Company.

3. The licensor agrees that he will obligate such manufacturer not to sell sensitized film to anyone but the licensees, except a small per cent, which may be supplied by the manufacturer to persons who do not make motion pictures of the standard size. (Sec. 4.)

4. The licensee agrees to pay certain royalties on the film to the licensor. (Sec. 4.) This amounts to approximately half a cent per foot, subject to reductions in proportion to sales. These royalties are called the “film royalties.”

5. The Patents Company agrees to collect royalties of \$2 a week from all exhibitors using motion-picture projecting machines embodying the inventions described in the letters patent which were to be assigned to the Patents Company. (Sec. 4.) This provision is to apply regardless of the fact that those machines had already been sold with no condition attached and had become the property of the exhibitor. The royalty was to be paid on all machines already on the market. These are called the “exhibitors’ royalties.”

6. The licensee agrees not to sell any motion-picture film, but only to lease or rent the same to licensed exchanges and in accordance with the terms of the exchange license agreement hereafter described. This was a radical departure from

the trade custom; previously manufacturers had sold films outright and had not leased them.

7. The licensee agrees not to lease or dispose of motion pictures to anyone dealing in motion pictures which are not the output of one of the licensees. (Sec. 6.)

8. The licensee agrees to mark conspicuously on labels which shall be placed on all boxes containing positive motion pictures the conditions under which the motion pictures are leased, among others that (a) the lessee, i. e., the rental exchange, shall not sell but shall only have the right to sublet such motion picture; (b) the lessee shall permit such motion pictures to be exhibited only on motion picture projecting machines licensed by the Motion Picture Patents Company and on no other machines; (c) the lessee shall not sublet such motion picture at a lower subrental price than that agreed upon (if any) in the contract of lease between the lessee and lessor; (d) a violation of any of the conditions shall entitle the lessor, i. e., the manufacturer, to immediate possession of the motion picture. (Sec. 7.)

9. The agreement fixes a scale of minimum prices for the lease of positive pictures by the manufacturers to the rental exchanges, and also provides:

The licensor and licensee further mutually covenant and agree that the above scale of minimum prices is to remain in force until a new scale of prices is adopted, each such new scale to be adopted during the continuance of this agreement by a majority vote, to be forthwith communicated to the licensor, of the licensee and the several additional licensees hereinafter provided for, or such of them as may at the time be licensees, on the basis of one vote for each 1,000 running feet of new subjects. (Sec. 9.)

10. The licensee agrees not to lease motion pictures either directly or indirectly at lower prices than those fixed and provided for in the agreement. (Sec. 13.)

11. It is agreed that the subleasing prices for the subleasing of pictures shall be fixed by a majority vote of the licensees. (Sec. 17.)

12. The licensee agrees not to dispose of positive motion pictures except by lease, as above described, or by sale for export only, and also to refrain from supplying motion pictures for use with any exhibiting or projecting machine, the license for which has been terminated by the licensor, and also to refrain from supplying motion pictures to any lessee who may sublet such motion pictures to persons using the same for giving exhibitions thereof on exhibiting machines not licensed by the licensor or the license for which has been terminated. (Sec. 18.)

13. The parties agree that no person other than the nine hereinbefore referred to shall obtain a license except by a majority vote of the licensees, on the basis of one vote for each thousand running feet of new subjects. (Sec. 20.)

14. The licensor agrees that it will issue licenses to make and sell exhibiting or projecting machines containing the inventions described in the letters patent assigned, but that it will not license any person except upon the condition that the sale and purchase of such machine gives only the right to use it solely for exhibiting motion pictures leased by a licensee of the licensor. (Sec. 20.)

15. The licensor agrees to charge a royalty of \$5.00 on every such machine. These are called the "machine royalties."

16. The licensor agrees to license the licensee to make and sell exhibiting machines. (Sec. 20.)

17. It is provided that the licensee may renew this agreement by giving notice to the licensor before April 20, of each year until August, 1919, the date of the expiration of the Letters Patent 707934, known as the Latham "loop" patent. (Sec. 21.) This is a patent relating to part of the mechanism of the camera and projector.

As previously stated, the Patents Company entered into substantially the same agreement with each of the nine manufacturers. George Kleine, one of the nine, but an importer and not a manufacturer, was licensed to import positive films, but the amount he was allowed to import was limited to 3,000 running feet of new subjects per week, and he agreed to confine his purchases to two foreign manufacturers, Gaumont and Urban. Prior to this license arrangement Kleine had imported the films of nine or ten foreign manufacturers and amounts largely in excess of 3,000 feet per week.

A few months later the Patents Company, by agreement of the nine manufacturers, voting as provided in paragraph 13 *supra* (section 20 of the license agreement) licensed defendants Gaston and George Melies to import not to exceed 1,000 feet of new subjects per week made in France by George Melies. Said two individual defendants are now doing business in the name of the Melies Manufacturing Co., corporation defendant, which company has the benefit of the license granted Messrs. Melies.

VI.

THE RENTAL EXCHANGE AGREEMENTS.

As stated above (*supra* p. 17, par. 6) the manufacturers' license agreement requires the manufacturer to lease film to rental exchanges in accordance with the terms of an exchange license agreement. In other words, the manufacturers, on December 18, 1908, adopted, and thereafter used, a uniform contract in the distribution of films to the rental exchanges. No company would thereafter lease or consign films to any rental exchange which had not signed one of these so-called license agreements with the Patents Company; furthermore, every rental exchange was not afforded

an opportunity to enter into such an agreement, for the defendants, acting through the Patents Company, refused licenses to a large number of the rental exchanges. Most of these were driven out of business. To about one hundred of the rental exchanges the Patents Company granted licenses. Under the terms of these agreements the Patents Company reserves the right to terminate the license at any time without cause on fourteen days notice by it, and to cancel the agreement at once on breach of any of its terms by the rental exchange. After such termination of an agreement the exchange can not obtain films from any of the licensed manufacturers. These agreements destroyed all competition between the rental exchanges for they prescribed the manner in which the exchange should do business, which was made the same for all exchanges. Thereafter the defendants, acting through the Patents Company, prevented the exchanges from competing with each other for the business of the exhibitors by prohibiting any two exchanges from serving the same exhibitor.

A copy of the exchange license agreement between the Patents Company and the rental exchange is attached hereto as a part of this petition, marked "Exhibit 4."

After enumerating the patents owned by the Patents Company, and reciting that the Patents Company has licensed nine manufacturers, naming them, to manufacture or import motion pictures, and to lease licensed motion pictures for use on projecting machines licensed by the licensor, the Motion Picture Patents Company, licenses the rental exchange under reissued Letters Patent 12192, the film patent, to lease licensed motion pictures from the licensed manufacturers and importers, and to sublet said licensed motion pictures for use only on projecting machines licensed by the licensor under letters patent owned by it.

The licensee, i. e., the rental exchange, agrees as follows:

(1) Not to buy, lease, or otherwise obtain any motion pictures other than licensed motion pictures, and to dispose of motion pictures only by subleasing under the conditions set forth in the contract. (Condition 1.)

(2) The ownership of each licensed motion picture is to remain in the licensed manufacturer. (Condition 2.)

(3) The licensee shall not sell or exhibit licensed motion pictures, but shall only sublet the same, and only to exhibitors who shall exclusively exhibit licensed motion pictures. (Condition 3.)

(4) The licensee shall not sell, rent, or otherwise dispose of any licensed motion pictures to any person engaged in selling or renting motion picture films. (Condition 6.)

(5) The licensee shall not sell or dispose of motion pictures to any person in the exhibition business who may have violated any of the conditions imposed by the licensor through any of its licensees and of which violation the licensee may have had notice. (Condition 10.)

(6) The licensee shall not sublet licensed motion pictures to any exhibitor unless a contract with said exhibitor satisfactory in form to the licensor, i. e., the Patents Company, is first executed, and unless each motion picture projecting machine on which the licensed motion pictures are to be used by such exhibitor is regularly licensed by the Motion Picture Patents Company and the license fees therefor have been paid. (Conditions 11 and 12.) The license fee is \$2 a week on every projector owned by the exhibitor.

(7) The licensee or rental exchange is required to mail to the Patents Company a list, giving the name of each exhibitor supplied with pictures by the rental exchange. (Condition 12.) The rental exchanges thereafter were not allowed to supply the same exhibitors; the latter were apportioned among the licensed exchanges. This paragraph (No. 12) in effect prevents the rental exchanges from subleasing pictures

to a new exhibitor until that exhibitor has received the approval of the Patents Company; by it the latter company is enabled to determine who shall become an exhibitor.

(8) The licensor agrees that before licensing any person in the United States to lease licensed motion pictures from licensed manufacturers, i. e., to be a rental exchange, it will exact from each such licensee an agreement similar in terms to the present agreement. (Condition 16.)

(9) The licensor may terminate the agreement on fourteen days' written notice to the licensee of its intention so to do, or immediately upon breach of any of its conditions. (Condition 19.)

(10) The terms and conditions of the license may be changed at the option of the licensor upon fourteen days' written notice to the licensee. (Condition 20.)

(11) The licensee shall return to each licensed manufacturer on the first day of every month, commencing seven months from the first day of the month on which the agreement is executed, an amount of positive motion picture film in running feet equivalent to that obtained the seventh preceding month. (Condition 9.)

(12) The leasing prices are stated in the agreement. (Condition 20.) *These become the same for every rental exchange in the United States.*

The effect of these rental exchange agreements was to place all the rental exchanges at the mercy of defendants and the Patents Company. This company would not allow exhibitors to lease from different exchanges, but required each exhibitor to obtain his entire supply of films from one exchange. In this respect competition between rental exchanges was eliminated. Each rental exchange paid the same for his films as every other exchange. To-day each of the ten Patents Company, licensees, leases its films at the same prices and on the same terms as the other nine licensees.

VII.

LICENSED EXHIBITORS.

After January 1, 1909, the defendants commenced to do business in accordance with the terms of the unlawful combination which they had formed and in which they are now engaged, and thereafter not one of the thousands of theater owners or exhibitors in the United States could obtain for exhibition purposes a motion picture manufactured by any of the ten manufacturers, comprising all the manufacturers and importers at that time doing business in the United States, unless the Patent Company recognized him and gave his name as a licensed exhibitor to the licensed exchanges. In order to secure a license, the exhibitor has to obligate himself to use upon his machines only pictures manufactured by the licensed manufacturers. The exhibitor has to pay on every exhibiting machine owned by him \$2 a week to the Patents Company; this so-called exhibitor's royalty applies to machines sold years before to the exhibitor without any conditions being attached to the sale. No two exchanges are permitted to serve the same exhibitor during the same period. Breach by a rental exchange or by an exhibitor of any of the conditions imposed by the defendants through the Patents Company subjects such rental exchange or exhibitor to an immediate cancellation of his license. The power and monopoly of the defendants became absolute. Defendants, through the Patents Company, were enabled to and did determine whether new motion picture theaters should or should not be opened and whether old ones should be closed, although defendants had no proprietary interest in such theaters. This power defendants have exercised and continue to exercise arbitrarily and unreasonably through the Patents Company. Whenever the Patents Company cancels the license of a rental exchange it sends notice thereof to all the

customers of such exchange, and likewise when it cancels the license of an exhibitor notice is sent to the rental exchanges. Thereafter neither such rental exchange nor exhibitor can obtain anywhere in the United States the product of any of the ten manufacturers defendants herein.

All the oppressive restrictions and unlawful conditions contained in the agreements and pointed out in the preceding paragraphs of this petition, and to be noted in the paragraphs to follow, defendants have observed and enforced at all times since they engaged in their unlawful combination, and they will continue to enforce said unreasonable and oppressive restraints and conditions unless restrained by this honorable court.

VIII.

LICENSE AGREEMENTS WITH MANUFACTURERS OF EXHIBITING MACHINES.

Defendants on December 18, 1908, not only by means of the Patents Company and the so-called license agreements bound together all manufacturers of moving-picture cameras and films into one combination, but also with the same unlawful purpose, and as a further means to monopolize trade, devised license agreements between the Patents Company and each manufacturer of projecting or exhibiting machines. The license agreements of December 18, 1908, recite that the parties are intending to conclude other agreements relating to projecting machines. (Supra, p. 19.) The agreements between the Patents Company and projecting machine manufacturers contain many of the restrictive provisions incorporated in the license agreements under the camera and film patents referred to above. (Supra, pp. 16 to 19.) Among other things, these agreements provide that every exhibiting machine shall be sold subject to the condition that it shall be used solely for exhibiting motion pictures containing the

invention of the reissued patent 12192; that is to say, every machine is to be sold subject to the condition that it shall be used only with films supplied by one of the ten licensed manufacturers.

These agreements also fix the prices at which all projecting machines are to be sold; these prices are made the same for all—that is to say, all competition in interstate commerce between the various manufacturers of projecting machines as to the prices and terms of sale of their respective machines is destroyed by establishing uniform prices. The agreements provide that the manufacturer shall pay the Patents Company a royalty of \$5 on every machine, called “machine royalties.”

The Patents Company, acting under the direction and domination and in the interest of defendants, early in 1909 concluded license agreements of the character indicated with all the companies at that time manufacturing and selling projecting machines in the United States, to wit:

American Mutoscope and Biograph Co., Apr. 20, 1909.

American Moving Picture Machine Company, Feb. 13, 1909.

Armat Moving Picture Co., Jan. 7, 1909.

Edengraff Mfg. Co., Jan. 7, 1909.

Edison Mfg. Co., Jan. 7, 1909.

Enterprise Optical Mfg. Co., Jan. 7, 1909.

Lubin Mfg. Co., Jan. 7, 1909.

Nicholas Power, Jan. 7, 1909.

Eberhard Schneider, Jan. 7, 1909.

Selig Polyscope Co., Jan. 7, 1909.

Spoor & Co., Jan. 7, 1909.

Vitagraph Co. of America, Jan. 7, 1909.

The companies just named, located in different States, were selling and shipping projecting and exhibiting machines in interstate commerce throughout the United States.

A copy of the license agreement under the exhibiting-machine patents between the Motion Picture Patents Company and the Armat Moving Picture Company is attached hereto as a part of this petition marked "Exhibit 5." This agreement is similar to those issued to the other companies named above.

IX.

GENERAL FILM COMPANY.

As has been pointed out above (*supra*, p. 6), persons engaged in the motion-picture business belong to one of three classes: (1) Manufacturers of cameras, films, and other appliances relating to the motion-picture art, and distributors of these articles to the rental exchanges; (2) rental exchanges or wholesale distributors, constituting the source of supply of the exhibitor; (3) exhibitors of moving pictures. By means of the Motion Picture Patents Company and the agreements above described, defendants restrained the commerce of the manufacturers and dominated and controlled the business of the rental exchanges and exhibitors. On or about April, 1910, defendants set out to monopolize the business of all the rental exchanges in the United States, their purpose being to drive out of business all persons so engaged and to absorb to themselves the profits theretofore made therein. This unlawful end they accomplished in the manner to be presently described by means of a corporation organized by them for that purpose, General Film Company, corporation defendant.

In April, 1910, defendants, with an intent to monopolize the rental exchange business, organized the General Film Company, a Maine corporation, capital stock \$2,000,000, reduced March, 1911, to \$1,000,000, preferred \$800,000, common \$200,000, common stock alone having voting rights

and all being owned by defendants. Each of the incorporators was connected with and interested in the business of one of the ten Patents Company, licensees.

The following were at once elected officers and directors, each officer and director being an officer of and largely interested in the business of one of the ten manufacturers:

President, J. J. Kennedy, president of the Biograph Company, and treasurer and director of the Motion Picture Patents Company since its organization.

Vice president, George Kleine, owning the business of George Kleine, hereinabove referred to.

Treasurer, Samuel Long, president of the Kalem Company.

Secretary, William Pelzer, also secretary of the Motion Picture Patents Company, and an officer of the Edison Manufacturing Company.

The following were elected directors:

Frank L. Dyer, president of the Motion Picture Patents Company and vice president of the Edison Manufacturing Company.

J. A. Berst, vice president of Pathé Frères.

J. J. Kennedy, president of the Biograph Company and treasurer of the Patents Company.

Siegmund Lubin, president of the Lubin Manufacturing Company.

Samuel Long, president of the Kalem Company.

Gaston Melies, president of Melies Manufacturing Company.

Albert E. Smith, president of Vitagraph Company of America.

George K. Spoor, president of Essanay Film Manufacturing Company.

W. N. Selig, president of the Selig Polyscope Company.

George Kleine, one of the ten licensed manufacturers.

Each one of the ten Patents Company, licensees, was represented by one director on the board of the General Film Company, and only representatives of those companies were elected to that board.

The articles of incorporation of the General Film Company recite among its purposes the following:

For the purpose of buying, selling, or otherwise acquiring or disposing of letters patent and licenses under letters patent for inventions pertaining to the production and use of photographic or other negatives, and photographic or other positives of objects at rest and objects in motion; manufacturing, buying, using, selling, or otherwise acquiring or disposing of apparatus, materials, etc., equipping theatres, halls, and similar places of amusement * * *.

A copy of the charter of General Film Company is attached hereto as a part of this petition, marked "Exhibit 6."

Before the organization of the General Film Company defendants, who were to be its officers and directors, had determined the amount of money the new company should expend in order to acquire, by purchase, by driving out of business, by cancellation of licenses by the Patents Company, or by other appropriate methods, all the licensed rental exchanges, to wit, \$2,480,000 cash and \$988,800 in preferred stock in the new company. Something less than that amount defendants in fact expended before January, 1912, in bringing to a successful conclusion the unlawful plan which they had set out to accomplish.

As has been pointed out previously (*supra*, 23), defendants, through the Patents Company, had incorporated in the license agreements with the rental exchanges a provision authorizing the Patents Company to terminate the agreement at any time upon two weeks' notice, and immediately

upon breach of any of its terms. This provision defendants after the formation of the General Film Company proceeded at once to invoke. Between April, 1910, and January 1, 1912, defendants, through the General Film Company, acquired the business or cancelled the license of every licensed rental exchange in the United States, except one, paying therefor \$2,243,089 in cash and notes and \$794,800 in preferred stock. During this period the General Film Company purchased 57 exchanges, paying therefor the sum just stated. Since its organization the Patents Company has cancelled the licenses of and driven out of business 42 exchanges, of which 21 were cancelled after the General Film Company commenced business. The result of the conspiracy of defendants is that to-day, of all the exchanges doing business in the United States December 18, 1908, only one, the Greater New York Film Company, survives. The latter company refused to sell out, whereupon the defendants, through the Patents Company, cancelled its license, but under the protection of a decree issued by the United States District Court in New York against defendants it is still able to obtain the films of defendants.

The General Film Company was incorporated by defendants solely as an unlawful instrumentality to effect the illegal purposes of defendants, and in order that it, in cooperation with the Motion Picture Patents Company, might drive out of business and interstate and foreign commerce in the United States all rental exchanges and absorb their businesses and profits and thereby enable the defendants to further monopolize commerce relating to the motion-picture art. The General Film Company became on its incorporation and has ever since been a combination in restraint of trade and commerce between the States and a monopolization thereof.

X.

AGREEMENT BETWEEN MOTION PICTURE PATENTS COMPANY
AND GENERAL FILM COMPANY.

Motion Picture Patents Company and General Film Company, acting under the direction and domination of the individual and other corporation defendants, with the unlawful purposes hereinabove described, entered into an agreement April 21, 1910, unlawfully and unreasonably restraining the interstate trade of the General Film Company and of the 10 manufacturers, to the execution of which agreement each of the 10 Patents Company licensees assented in writing on the same day. A copy of that agreement, dated April 21, 1910, is attached to this petition as a part hereof, marked Exhibit 7. Defendants have observed and carried out said agreement since its execution and they are now conducting their several businesses in accordance with and in conformity to the unlawful terms and conditions established by said agreement. In brief, the agreement, Exhibit 7, provides:

(1) The Patents Company grants to the General Film Company in the United States a license to have positive motion pictures manufactured for it by the Patents Company licensees, and to purchase positive motion pictures manufactured in foreign countries, and to lease such positive motion pictures provided they are leased subject to the condition that they be used solely in exhibiting or projecting machines containing the inventions or some of them of the letters patent owned by the Patents Company. (Par. 6).

(2) The licensee agrees that all positive motion pictures manufactured for it during the continuance of the agreement shall be manufactured only by the Patents Company, licensees. (Paragraph 8.) This paragraph prevents the General Film Company from purchasing, leasing, or selling or otherwise dealing in positive motion pictures except those

manufactured for it by the Patents Company, licensees, without the consent in writing of the licensor.

(3) The Film Company agrees to pay a royalty to the licensor on all motion pictures purchased by it at the maximum rate of one-half cent per running foot. (Paragraph 9.) This royalty is subject to reduction if the amount purchased is over 4,000,000 running feet. If it runs as high as 10,000,000 feet, the royalty is reduced to $3\frac{1}{4}$ mills per running foot. (Paragraph 10.)

(4) The Film Company agrees not to lease, sell, or otherwise dispose of motion pictures to anyone purchasing, using, dealing in, etc., motion pictures which are not the output of the General Film Company or of other licensees of the Patents Company. (Paragraph 12.)

(5) The Film Company agrees that no lease of positive motion pictures manufactured for or purchased by the licensee shall be made in the United States except upon certain conditions which are practically the same as those which were stated in the rental exchange agreement executed between the Patents Company and the rental exchanges (*supra*, pp. 19 to 22) (paragraph 14), to wit:

1. The lessee (that is, the exhibitor) shall not dispose of the pictures, but shall only have the right to use them in machines licensed by the Patents Company under patents owned or thereafter acquired by the Patents Company.

2. The lessee shall not sublet the motion pictures.

3. The licensee, that is, the Film Company, shall on the first day of every month withdraw from the market an amount of positive motion pictures equal to the amount of such motion pictures leased by it during the seventh month preceding the date of each such withdrawal.

4. The violation of any of these conditions entitles the lessor (General Film Company) to immediate possession of such motion pictures.

(6) The Film Company agrees that it will dispose of motion pictures manufactured for or purchased by it only by sale for export or by lease to motion-picture exhibitors in the United States for the purpose only of using such motion pictures for giving exhibitions in exhibiting machines licensed by the Patents Company under patents named or thereafter acquired (paragraph 15); that it will not use the pictures for the purpose of giving exhibitions thereof for profit; that it will not knowingly allow motion pictures manufactured for or purchased by it to be used with any exhibiting machines not licensed by the licensor, under patents owned by it or thereafter acquired; that it will refrain from supplying motion pictures for use with any exhibiting machines the license for which has been terminated and the Film Company notified thereof by the licensor; that it will refrain from supplying motion pictures to any lessor who may loan or sub-lease such motion pictures, or who may use such pictures for giving exhibitions thereof in exhibiting machines not licensed by the licensor or the license for which has been terminated (paragraph 15).

(7) It is provided that the agreement may be renewed yearly until August 26, 1919, the date of expiration of Patent 707934, known as the Latham "Loop" Patent. (Paragraph 18.)

The agreement last described was consented to by each of the 10 Patents Company licensees, each of whom affixed its consent thereto in writing, such consent being given "with the understanding that said General Film Company is not to have under said limited license in writing any voting rights or royalty-sharing rights such as those referred to in said agreement of the undersigned with said Motion Picture Patents Company."

XI.

**AGREEMENTS BETWEEN THE GENERAL FILM COMPANY AND
PATENTS COMPANY LICENSEES.**

On April 21, 1910, with the same unlawful purposes each of the 10 Patents Company licensees executed an agreement with the General Film Company to supply the latter with film to be leased to exhibitors. These agreements are identical with each other except as to the paragraph stating the number of running feet of film which the General Film Company agrees to take.

Defendants by agreement with each other executed these agreements as another means for accomplishing their unlawful purpose to monopolize the motion-picture art and all interstate and foreign business, trade, and commerce relating thereto. Defendants have observed and are now observing said agreements and all the terms thereof, and interstate and foreign trade and commerce in articles necessary in the motion-picture art are being restrained thereby.

A copy of the agreement between the General Film Company and Edison Manufacturing Company, dated April 21, 1910, is attached hereto as a part hereof, marked "Exhibit 8." Said agreement, substantially identical with nine other agreements concluded the same day with the other Patents Company licensees, after reciting the interlocking restrictions contained in the other agreements, provides in brief:

(1) The manufacturer (Edison Company) agrees to supply the General Film Company with as many copies of each licensed motion picture released by the manufacturer as the General Film Company may require for the conduct of its business and to supply them at the same leasing prices, terms, etc., as it leases them to others. (Paragraph 6.)

(2) The General Film Company agrees that it will lease from the manufacturer motion pictures and will use its best efforts to introduce them and extend their use by motion-

picture exhibitors using the licensed projecting machines. (Paragraph 7.)

(3) The Film Company agrees to pay the manufacturer* a share of its net profits at the end of each year during the continuance of the agreement, after it has paid 7 per cent dividend on its preferred stock and 12 per cent dividend on the common stock. The manufacturer is to have such a proportion of the net profits remaining after the deduction of the dividends as the number of running feet of pictures leased by the manufacturer to the Film Company bears to the total amount of running feet leased by the Film Company from all the Patents Company licensees during that year. (Paragraph 8.)

(4) The agreement shall continue until August 26, 1919, the date of the expiration of the Latham "loop" patent, No. 707,934. (Paragraph 12.)

The agreement states the minimum number of reels which the General Film Company agrees to take, as well as the maximum which it may be obliged to receive.

XII.

CONCLUSION.

Throughout the period of time mentioned in this petition and in all their actions described herein, defendants have been actuated by the purpose to monopolize all branches of interstate and foreign commerce relating to the motion-picture art and to exclude all others therefrom.

As a means to that end, they organized the Motion Picture Patents Company, a New Jersey corporation. To it they transferred patents competing with each other and patents not competing, patents valuable and patents of little if any worth.

Not satisfied with the benefit of the lawful monopolies and rights belonging to them under the several letters patent which they separately and independently of each other

owned, defendants coveted the unlawful power which would come to them if they combined all patents in one ownership; that is, if they created and thereafter possessed and maintained a monopoly of all patents relating to the motion-picture art. Defendants formed a combination of patents as one of the methods for monopolizing interstate and foreign commerce pertaining to the motion-picture art.

The Motion Picture Patents Company is an unlawful instrumentality operated and maintained by defendants solely for the purpose of carrying into effect their unlawful intent. The Patents Company has never owned any property except the patents transferred to it by defendants and which, upon its dissolution, it must reassign, without consideration, to the several defendants who owned and transferred them to the Patents Company. (Supra, pp. 14 to 16.). Other than collecting royalties from defendants and distributing such royalties among them in the manner prescribed by the agreements, its only business has been and is the bringing of lawsuits under the patents which it acquired from defendants. Acting under the direction of the other defendants, in order to compel observance by rental exchanges, exhibitors, and all other persons of the unlawful restraints embodied in the agreements, and in order to harass and oppress all persons engaged in the motion-picture business who have not obeyed its mandates, it has brought hundreds of suits in the courts of law against rental exchanges, exhibitors, and others. Defendants have used their power, great by virtue of their combination, unreasonably and oppressively in order to further extend their monopoly and exclude others from the motion-picture art.

Defendants devised the interlocking restrictions, described above, applying to the use of their several machines, appliances, and apparatus as a method to perpetuate their monopoly. Not one of these restrictions is a legal and reason-

able condition attached to the use of a patented machine by the owner of the patent acting singly and in good faith in order to protect his lawful monopoly, but each condition is one and a part of a combination of conditions and restrictions devised by a combination of all the defendants, all the conditions applying collectively to and interlocking the use of all the machines. These restrictions and unlawful restraints dovetail into each other in such a manner that the manufacturer, the rental exchange, and the exhibitor must use all or none of the machines covered by the different patents. He can use no others.

With the object of concealing their true purposes and the the real character of the combination, defendants devised, adopted, and enforced the so-called license agreements, attempting to give to their actions a lawful appearance and to the combination a legal form. In the agreements they embodied unlawful restraints upon commerce, styled by defendants qualifications upon the use of patented machines, but in fact unreasonable, undue, and oppressive restraints arbitrarily imposed by them upon commerce in articles not patented.

As previously pointed out, by far the largest and most important part of the commerce relating to the motion-picture art is the commerce in positive films, of which millions of running feet are distributed each week throughout the United States and subsequently displayed by thousands of exhibitors throughout the country. The combination of defendants was devised to restrain that commerce. Such positive films are not patented. Reissued Letters Patent 12192 (attached hereto as a part hereof, marked "Exhibit 9"), made by defendants the basic patent of their combination, relates only to the negative film. The positive film, (which is sometimes copyrighted by the producer), is the product of the negative, being developed and printed from

the latter. The dominion of the patentee does not include control over the product of the patented article unless new in a patentable sense. Therefore, whether or not Reissued Letters Patent 12192 is a valid patent, as to which grave doubt must exist in view of the decision of the Circuit Court of Appeals of the Second Circuit, March 10, 1902, holding invalid the patent of which 12192 is in part a reissue and stating that the owner of the prior patent was not the inventor of the film (114 Fed., 934), in any event, defendants have no lawful right under the patent laws to destroy competition in commerce and restrain commerce in the unpatented positive film.

Defendants, by means of the license agreements, have prevented and are preventing the importation of foreign films except to a limited extent by defendant Kleine and corporation defendant, Melies Manufacturing Company, who are allowed to import only a small quantity weekly, and thereby defendants have deprived and are depriving the public of the advantages which would arise from competition with foreign films.

Defendants created the General Film Company as a means for monopolizing the commerce of the rental exchanges in the manner hereinabove pointed out, and they are now maintaining and operating it with the same unlawful intent.

Between 70 and 80 per cent of the motion-picture film annually manufactured and sold in the United States is the product of the ten Patents Company licensees. This film is shipped by the manufacturers to 45 branches of the General Film Company scattered over the United States and distributed by the latter to approximately 7,000 exhibitors. Independent manufacturers of film may not distribute their product through the General Film Company, which is the sole distributing agency of the Patents Company licensees; exhibitors obtaining supplies of film from the General Film Company are not allowed to display the films of the independent

manufacturers. Independent exchanges are cut off from handling the film of the ten Patents Company licensees and independent exhibitors and theater owners can not obtain for exhibition in their theaters the pictures of the Patents Company licensees.

In conclusion, all the unlawful restraints and conditions contained in the license agreements and described in this petition defendants to-day are observing and enforcing, and will continue to observe and enforce unless restrained by this honorable court.

XIII.

JURISDICTION.

Petitioner avers that the combination and conspiracy to restrain interstate and foreign commerce and motion-picture films, machines, and apparatus relating to the motion-picture art still exists; that the defendants are carrying out and engaging in the same within the State of Pennsylvania within the Eastern District of said State, and that many of the things herein complained of have been committed in whole and others in part within the said State and district and are now being committed therein; that the defendant Lubin Manufacturing Company is located at and doing business within said State and district.

XIV.

PRAYER.

Wherefore petitioner prays:

1. That the combination hereinbefore described, in and of itself, as well as each and all of the elements composing it, whether corporate or individual, whether considered collectively or separately, be decreed to be in restraint of interstate and foreign trade and an attempt to monopolize and a monopolization thereof within the first and second sections of the act of Congress of July 2, 1890, entitled "An act to

protect trade and commerce against unlawful restraints and monopolies.”

2. That the court adjudge the Motion Picture Patents Company and the General Film Company, severally and respectively, to be a combination in restraint of interstate and foreign trade and commerce in motion-picture films and other articles relating to the motion-picture art, a restraint, and an attempt to monopolize and a monopolization thereof, and that the court direct a dissolution of each of said combinations.

3. That the court adjudge the Motion Picture Patents Company and the General Film Company, severally and respectively, to be an unlawful instrumentality operated and maintained by defendants solely for the purpose of carrying into effect the illegal purposes of said contracts, combinations, and conspiracies in restraint of interstate trade and commerce and of said attempts to monopolize, and monopolies.

4. That the court adjudge that the various so-called license agreements described in the petition, entered into between the Motion Picture Patents Company and the 10 Patents Company licensees, and the so-called license agreements between the Motion Picture Patents Company and the General Film Company, and the agreements between the General Film Company and the 10 Patents Company licensees, and all other license agreements referred to and described in the petition, were devised, planned, entered into, and are now being observed and enforced solely for the purpose of enabling the defendants to carry into effect the objects and purposes of said unlawful combination and conspiracy in restraint of said interstate and foreign trade and commerce; that each of said agreements be declared illegal, and be canceled, and that the defendants, and all and each of them, and their officers, agents, servants, and employees, be enjoined and prohibited from

doing anything in pursuance or in furtherance of said agreements, and from enforcing in any manner said agreements, or any of the terms thereof, in interstate and foreign commerce.

5. That the court by way of an injunction restrain the movement of the products of the 10 Patents Company licensees and of the General Film Company in the channels of interstate commerce until the decree of the court respecting the Motion Picture Patents Company, the General Film Company, and the said so-called license agreements has been carried into effect by defendants and said Patents Company and General Film Company dissolved and said agreements canceled.

6. That the court adjudge that the patents named in the so-called license agreements referred to and described in the petition, now claimed to be held and owned by defendant Motion Picture Patents Company, were acquired, and are now held by said defendant by virtue of such combination and conspiracy in restraint of trade and commerce among the several States and with foreign nations, and solely to effectuate the unlawful objects and purposes of the same, and that the said Motion Picture Patents Company, its officers, directors, and agents, be enjoined from exercising or attempting to exercise any control, direction, supervision, or influence whatever over the interstate or foreign commerce of the other defendants by virtue of said company holding said patents or otherwise.

7. That the defendants and all and each of them be enjoined and prohibited from entering into or continuing any similar combination or conspiracy, and from agreeing, combining, conspiring, and acting together to prevent each and any of them from carrying on interstate and foreign trade and commerce in motion picture films and other articles relating to the motion picture art in competition with the others.

8. That the United States may have such other and further relief as the nature of the case may require and the court may deem proper in the premises.

To the end, therefore, that the United States of America may obtain the relief to which it is justly entitled in the premises, may it please your honors to grant unto it writs of subpoena directed to the said defendants: Motion Picture Patents Company, General Film Company, the Biograph Company, Thomas A. Edison (Inc.), Essanay Film Manufacturing Company, the Kalem Company (Inc.), George Kleine, Lubin Manufacturing Company, Melies Manufacturing Company, Pathé Frères, Selig Polyscope Company, Vitagraph Company of America, Armat Moving Picture Company, Frank L. Dyer, Henry N. Marvin, J. J. Kennedy, William Pelzer, Samuel Long, J. A. Berst, Siegmund Lubin, Gaston Melies, Albert E. Smith, George K. Spoor, W. N. Selig, and each and every one of them, commanding them and each of them to appear herein and answer, but not under oath (answer under oath being hereby expressly waived), the allegations contained in the foregoing petition and abide by and perform such orders and decree as the court may make in the premises.

JOHN C. SWARTLEY,
United States Attorney.

GEORGE W. WICKERSHAM,
Attorney General.

JAMES A. FOWLER,
Assistant to the Attorney General.

EDWIN P. GROSVENOR,
Special Assistant to the Attorney General.

EXHIBIT 1.

CHARTER OF MOTION PICTURE PATENTS COMPANY.

This is to certify that we, the undersigned, do hereby associate ourselves into a corporation under and by virtue of the provisions of an act of the legislature of the State of New Jersey entitled "An act concerning corporations (revision of 1896)," and the supplements thereto and acts amendatory thereof, for the purposes hereinafter mentioned, hereby claiming for ourselves all the rights and privileges now or hereafter granted by the laws of the State of New Jersey to corporations, and to that end we do by this our certificate set forth:

First. The name which we have assumed to designate such corporation and to be used in its business and dealings is "Motion Picture Patents Company."

Second. The location of the principal office of the corporation in this State is at No. 15 Exchange Place, Jersey City, in the county of Hudson. The name of the agent therein and in charge thereof upon whom process against the corporation may be served is Charles L. Carrick.

Third. The objects for which this corporation is formed are to acquire by purchase, lease, payment of royalties, or otherwise, letters patent, inventions and improvements in materials, processes, and apparatus relating to the production of negatives and positives for motion pictures, and also relating to the photographing, developing, reproducing, projecting, and exhibiting of scenes and objects at rest and in motion; to mortgage, sell, lease, dispose of by agreement or otherwise, such letters patent, licenses under letters patent, and improvements, and to license others to use the inventions covered by the said letters patent and to use such improvements; to purchase, hold, sell, and convey such real and personal property as shall be lawful and adapted to the requirements of the business of the company.

This corporation shall also have power to conduct its business in all its branches and to have one or more offices and to hold, lease, or convey real or personal property outside of the State of New Jersey and in all other States and in all foreign countries to which the business of the company may be hereafter extended, and to do any acts or things designed to protect, improve, or enhance the value of any of such patents and of other property of the corporation.

Fourth.—The amount of capital stock of the company is one hundred thousand dollars (\$100,000) divided into one thousand (1,000) shares of the par value of one hundred dollars (\$100) each. The amount of capital stock with which the company shall commence business is two thousand dollars (\$2,000).

Fifth.—The names and post-office addresses of the incorporators and the number of shares subscribed for by each are as follows:

Names.	Post-office addresses.	Number of shares.
Hugh H. Harrison,	Brook Haven, N. Y.	10
Geo. J. Murray,	23 Park avenue, Arverne, L. I.	5
William H. Lane,	4 Boulevard, Westfield, N. J.	5

Sixth.—The existence of this corporation shall begin on the day of the filing of these articles of incorporation in the office of the secretary of state of New Jersey and shall continue for a period of fifty (50) years from that date.

In witness whereof we have hereunto set our hands and seals this 8th day of September, nineteen hundred and eight.

HUGH H. HARRISON. [L. S.]

GEO. J. MURRAY. [L. S.]

WILLIAM H. LANE. [L. S.]

In presence of Guernsey R. Jewett as to Hugh H. Harrison, Geo. J. Murray, and William H. Lane.

"Filed and recorded September 9, 1908.

"S. D. DICKINSON,

"*Secretary of State.*"

EXHIBIT 2.

PRELIMINARY AGREEMENT FOR ASSIGNMENT OF PATENTS BETWEEN MOTION PICTURE PATENTS COMPANY AND EDISON MANUFACTURING COMPANY, DECEMBER 18, 1908.

Agreement made this 18th day of December, 1908, by and between the Motion Picture Patents Company, a corporation organized and existing under the laws of the State of New Jersey, and having an office at Jersey City in said State (hereinafter referred to as the "Patents Company"), party of the first part, and the Edison Manufacturing Company, a corporation organized and existing under the laws of the State of New Jersey, and having an office at Orange in said State (hereinafter referred to as the "Edison Company"), party of the second part:

(1) Whereas the Edison Company represents that it is the owner of all the right, title, and interest in and to reissued United States Letters Patent No. 12037, dated September 30, 1902, and reissued United States Letters Patent No. 12192, dated January 12, 1904, and that there are no outstanding licenses under the said letters patent other than those hereinafter referred to, and

(2) Whereas the Edison Company represents that it has heretofore granted licenses in writing to manufacture and use the inventions described and claimed in said reissued Letters Patent No. 12037, and to manufacture and sell the invention described and claimed in the said reissued Letters Patent No. 12192, to the Vitagraph Company of America, of New York; Siegmund Lubin, of Philadelphia; the Selig Polyscope Company of Chicago; the Essanay Company of Chicago; the Kalem Company of New York; and the George Melies Company of Chicago, all dated January 31, 1908, and to Pathé Frères of New York, dated May 20, 1908, to go into effect June 20, 1908 (the licensees under said license agreements being hereinafter referred to as "Edison Licensees"), and the Edison Company further represents

that the said Edison Licensees are willing to suspend the operation of the said licenses; and

(3) Whereas, the Edison Company represents that it has heretofore entered into two agreements in writing, dated May 20, 1908, with the Eastman Kodak Company, a corporation of New York (hereinafter referred to as the "Eastman Company"), granting the right to the said Eastman Company to supply "licensed film" to the Edison Licensees, and that the Eastman Company is willing to terminate the said agreements; and

(4) Whereas, the Patents Company represents that it has an authorized capitalization of one hundred thousand dollars (\$100,000), of which twenty (20) shares of a par value of \$2,000 are outstanding, and whereas, the Edison Company desires to acquire fifty thousand dollars (\$50,000) of the capital stock of the Patents Company, and is willing to assign to the Patents Company all of its right, title, and interest in and to the said reissued United States letters patent and is willing to suspend the operation of the said licenses granted thereunder, and to terminate the said agreements with the Eastman Company, in consideration of the payment to the Edison Company of forty-nine thousand dollars (\$49,000) of the capital stock of the Patents Company, and one thousand dollars (\$1,000) in cash, provided that for the said one thousand dollars in cash, the Patents Company shall have assigned to the Edison Company ten (10) shares of the said capital stock at a par value of one thousand dollars (\$1,000); and

(5) Whereas, the board of directors of the Patents Company has ascertained, adjudged, and declared that the said right, title, and interest in the said reissued letters patent free from the operation of the said licenses and agreements, are of the fair value of fifty thousand dollars (\$50,000) and that the acquisition thereof is necessary for the business of the Patents Company and to carry out its contemplated objects; and

(6) Whereas, the Patents Company represents that it has acquired or will acquire from the Vitagraph Company of America, of New York, all the right, title, and interest in and

to United States Letters Patent Nos. 673329, 744251, 770937, 771280, 785205, and 785237 (hereinafter referred to as the "Vitagraph patents") all of which relate to motion picture projecting machines, and has agreed to pay to the said Vitagraph Company of America a royalty of one dollar (\$1) on each projecting machine embodying one or more of the inventions described and claimed in the said Vitagraph patents made and sold under any licenses for the manufacture and sale of such projecting machines, granted by the Patents Company (said royalties being hereinafter referred to as "Vitagraph royalties") and also further represents that it has acquired or will acquire from the American Mutoscope and Biograph Company, a corporation of New Jersey (hereinafter referred to as the "Biograph Company"), and the Armat Moving Picture Company, a corporation of West Virginia (hereinafter referred to as the "Armat Company"), all the right, title, and interest in and to United States Letters Patent Nos. 578185, 580749, 586953, 588916, 629063, 673992, 707934, and 722382, all of which relate to motion picture projecting machines or cameras; and

(7) Whereas, the Patents Company represents that it contemplates deriving royalties under patents covering projecting machines owned by the Patents Company from manufacturers of projecting machines (hereinafter referred to as "machine royalties"); royalties from exhibitors for the use of projecting machines licensed under any or all of the patents covering projecting machines owned by the Patents Company (hereinafter referred to as "exhibitors' royalties"), and royalties derived from manufacturers and importers of motion pictures under said reissued United States Letters Patent Nos. 12037 and 12192 (hereinafter referred to as "film royalties"); and

(8) Whereas, the Patents Company has agreed to pay to the manufacturers and importers of licensed motion pictures, except the Biograph Company and the Edison Company, 24 per cent (24%) of the gross exhibitors royalties;

Now, therefore, this indenture witnesseth that:

(9) The Edison Company, in and by these presents, does agree to assign, transfer, and set over unto the Patents

Company and its successors in business, the entire right, title, and interest in and to the said reissued United States Letters Patent, Nos. 12037 and 12192, and the inventions described and claimed therein, and the right to sue for and recover damages and profits for past infringement of the said reissued letters patent and of each of them, and to enter into agreements in writing with the said Edison Licensees suspending the operation of the licenses granted by the Edison Company under the said reissued United States Letters Patent to the said Edison Licensees, so long as the said reissued letters patent are owned by the Patents Company, and to enter into agreements in writing with the Eastman Company terminating the agreements in writing referred to in paragraph 3 hereof, so long as the said reissued letters patent are owned by the Patents Company.

(10) The Patents Company hereby covenants and agrees, in consideration of the said agreement of the Edison Company, and upon the assignment of the said reissued letters patent to the Patents Company, and upon the making of the said agreements in writing by and between the Edison Company and the Edison Licensees and the Eastman Company, to issue to the Edison Company certificates of stock of the Patents Company to the aggregate amount of four hundred and ninety (490) shares, of a par value of forty-nine thousand dollars (\$49,000), and to pay to the Edison Company one thousand dollars (\$1,000) in cash, and the Patents Company further covenants and agrees that at the same time there shall be assigned to the Edison Company for the said \$1,000 in cash ten (10) shares of the capital stock of the Patents Company at a par value of one thousand dollars (\$1,000).

(11) The Edison Company covenants and agrees that it has canceled or will cancel any licenses, shop rights, or other rights which may have been heretofore granted under either or both of the said reissued United States letters patent to any person, firm, or corporation other than the Edison Licensees, and the Edison Company further covenants and agrees that it will save harmless in all respects the Patents Company from any claim under any agreement, contract, or other obligation which the Edison Company or its

predecessors in title may have entered into or assumed with any person, firm, or corporation concerning or involving any licenses, shop right, or other right under any or all of the said reissued letters patent.

(12) The Patents Company further covenants and agrees that it will keep in separate accounts the incomes from film royalties, from machine royalties, and from exhibitors' royalties, and that the general and contingent expense of the Patents Company (which shall not include any expense incurred in any litigation) shall not exceed fifty thousand dollars (\$50,000) in any one year. The Patents Company further covenants and agrees that on June 20, 1909, and at the end of each and every year thereafter until the expiration of the said reissued United States Letters Patent Nos. 12037, and 12192, and on August 14, 1914, the date of expiration of the said reissued letters patent, it will make up the accounts of and distribute the said royalties for the preceding year or portion thereof, as the case may be, in the following manner:

First. From the machine royalties shall be deducted the Vitagraph royalties for payment to the Vitagraph Company of America, and from the exhibitors' royalties shall be deducted 24 per cent (24%) thereof for payment to the manufacturers and importers of licensed motion pictures.

Second. From the film royalties and the remainders of the machine royalties and of the exhibitors' royalties shall be deducted the general and contingent expense for the preceding year or portion thereof, as the case may be, together with any expense for litigation which may have been incurred by the Patents Company, in shares proportioned according to the ratio which each of said sums bears to the gross income of the Patents Company for that year or portion thereof, the remainders of such sums after the said deductions are made being hereinafter referred to as "net film royalties," "net machine royalties," and "net exhibitors' royalties," respectively.

Third. The net film royalties, the net machine royalties, and the net exhibitors' royalties shall be paid to the trustee provided for in paragraph 14 of this agreement as a dividend

upon the capital stock of the Patents Company, and the said trustee shall be instructed to divide and pay the said dividend in the following manner:

(a) To the Edison Company shall be assigned and paid an amount equal to the net film royalties.

(b) The remainder of the dividend, up to an amount equal to the net film royalties, shall be assigned and paid to the Biograph Company and the Armat Company, respectively, in the proportion of two-thirds ($\frac{2}{3}$) to the Biograph Company and one-third ($\frac{1}{3}$) to the Armat Company.

(c) If any balance remains after the foregoing payments, it shall be divided and paid to the Edison Company, the Biograph Company, and the Armat Company, in the proportion of one-half ($\frac{1}{2}$) to the Edison Company, one-third ($\frac{1}{3}$) to the Biograph Company, and one-sixth ($\frac{1}{6}$) to the Armat Company.

(13) The Patents Company further covenants and agrees that, on August 31, 1915 (one year after the date of the expiration of reissued Letters Patent Nos. 12037 and 12192), and at the end of each and every year thereafter, it will pay to the trustee provided for in paragraph 14 of this agreement all of its net profits for the preceding year, which consists of the net machine royalties, the net exhibitors' royalties and the net sum of any royalties which the Patents Company may collect in lieu of the present film royalties (such net amounts being determined as provided for in paragraph 12 hereof) as a dividend upon the capital stock of the Patents Company, and will instruct the trustee to divide the said dividend and pay to the Edison Company therefrom an amount equal to one-half ($\frac{1}{2}$) of such dividend.

(14) The Edison Company further covenants and agrees not to pledge, sell or otherwise dispose of its capital stock in the Patents Company, except the minimum number of shares sufficient to qualify one-half of the total number of directors which the Patents Company may have, without the consent of the Biograph Company and the Armat Company, and the Edison Company further agrees to deposit its certificates of stock in the Patents Company, except such as represent the said qualifying shares for directors, with a responsible

trust company named by the Patents Company, as trustee, and to instruct the said trustee not to release, transfer, or return the said certificates so deposited, without the consent of the Biograph Company and the Armat Company.

(15) It is further mutually covenanted and agreed by and between the Patents Company and the Edison Company that this agreement shall take effect on the date hereof, and that if during the life of this agreement either party should knowingly or through gross neglect or carelessness be guilty of a breach, violation, or nonperformance of its covenants, conditions, and stipulations, resulting in substantial injury to the other party, and should for the period of thirty days after notice thereof from the other party, persist therein or fail to correct, repair, or remedy the same, then and in such case the party aggrieved may terminate this agreement by giving thirty days' notice in writing to the guilty party of its intention so to do, and it is further mutually covenanted and agreed that this agreement may also be terminated by either of the parties hereto in case that the Patents Company should become bankrupt, cease doing business, or should be dissolved voluntarily or otherwise, or its charter should be repealed. It is also further mutually covenanted and agreed that, upon the termination of this agreement for any of the foregoing causes, or any other cause, all of the right, title, and interest in and to the said reissued United States Letters Patent Nos. 12037 and 12192 shall be reassigned by the Patents Company to the Edison Company for and in consideration of the sum of one dollar (\$1).

In witness whereof, the parties hereto have caused this agreement to be executed by their officers duly authorized to perform these acts, the day and year first above written.

[SEAL.]

MOTION PICTURE PATENTS COMPANY.

By H. H. HARRISON, *President*.

Attest:

GEO. J. MURRAY, *Secretary*.

[SEAL.]

EDISON MANUFACTURING COMPANY,

By FRANK L. DYER, *Vice President*.

Attest:

A. WESTIE, *Secretary*.

EXHIBIT 3.

LICENSE AGREEMENT UNDER THE CAMERA AND FILM PATENTS BETWEEN MOTION PICTURE PATENTS COMPANY AND BIOGRAPH COMPANY, DECEMBER 13, 1908.

(a) This agreement, made this 18th day of December, 1908, by and between Motion Picture Patents Company, a corporation organized and existing under the laws of the State of New Jersey, and having an office at Jersey City, in said State, party of the first part (hereinafter referred to as the Licensor), and American Mutoscope and Biograph Company, a corporation organized and existing under the laws of the State of New Jersey, and having an office at New York City, party of the second part (hereinafter referred to as the Licensee), witnesseth:

(b) Whereas, the Licensor represents that it is organized to own, deal in, and grant licenses under letters patent pertaining to the motion-picture art, and that it is the owner of all the right, title, and interest in and to United States Letters Patent—

No. 578185, dated March 2, 1897, for Vitascope, granted to Thomas Armat;

No. 580749, dated April 13, 1897, for Vitascope, granted to Thomas Armat;

No. 586953, dated July 20, 1897, for Phantoscope, granted to Charles F. Jenkins and Thomas Armat;

No. 588916, dated August 24, 1897, for Kinetoscope, granted to Charles M. Campbell as the assignee of Willard G. Steward and Ellis F. Frost;

No. 629063, dated July 18, 1899, for Kinetoscopic Camera, granted to American Mutoscope Company as the assignee of Herman Caslet;

No. 673329, dated April 30, 1901, for Kinetoscope, granted to the American Vitagraph Company as the assignee of Albert E. Smith;

No. 673992, dated May 14, 1901, for Vitascope, granted to Thomas Armat;

No. 707934, dated August 26, 1902, for Projecting Kinetoscope, granted E. & H. T. Anthony & Co. as assignees of Woodville Latham;

No. 722382, dated March 10, 1903, for Animated Picture Apparatus, granted to American Mutoscope & Biograph Company as the assignee of John A. Pross;

No. 744251, dated November 17, 1903, for Kinetoscope, granted Albert E. Smith;

No. 770937, dated September 27, 1904, for Kinetoscope, granted the Vitagraph Company of America as the assignee of Albert E. Smith;

No. 771280, dated October 4, 1904, for Winding-Reel granted Albert E. Smith;

No. 785205, dated March 21, 1905, for Flame-Shield for Kinetoscopes, granted the Vitagraph Company of America as the assignee of William Ellwood; and

No. 785237, dated March 21, 1905, for Film-Holder for Kinetoscopes, granted the Vitagraph Company of America as the assignee of Albert E. Smith;

all of which said letters patent relate to improvements in the motion picture art, and that there are no outstanding licenses, shop rights, or other rights under said letters patent, or either of them, except a license for Parlor Kinetoscopes granted the Karmata Company, of Washington, D. C., under Letters Patent Nos. 578185, 580749, 586953, and 673992, and certain alleged licenses under U. S. Letters Patent No. 586953, which are in dispute, claimed to be owned by the Edison Company and the American Graphophone Company, of Washington, D. C., and S. Lubin, of Philadelphia, Pennsylvania; and excepting a license granted by the American Mutoscope & Biograph Company to the firm of Marvin and Casler to manufacture and sell cameras and exhibiting or projecting machines under letters patent owned by it (some of which are hereinbefore referred to) for use in foreign countries only, and excepting certain licenses granted by the Armat Motion Picture Company to the American Mutoscope & Biograph Company under

Letters Patent Nos. 578185, 580749, 586953, 588916, and 673992, and by the latter company to the former company under Patents Nos. 707934 and 722382, which licenses are, however, by agreement between said parties, suspended and are not to be acted upon until the Licensor becomes bankrupt, ceases doing business, or shall be dissolved voluntarily or otherwise, or its charter shall be repealed; and

(c) Whereas, the Licensor is the owner of all the right, title, and interest in and to reissued Letters Patent of the United States Numbered 12037, dated September 30, 1902, and 12192, dated January 12, 1904, the original Letters Patent whereof are Numbered 589168 and dated August 31, 1897, and that there are no outstanding licenses, shop rights, or other rights under said reissued letters patent, or either of them, except license agreements thereunder between the Edison Company and Pathe Freres of New York, dated May 20, 1908 (to go into effect June 20, 1908), and between the Edison Company and the Kalem Company, of New York; the Essanay Company, of Chicago; Siegmund Lubin, of Philadelphia; George Melies Company, of Chicago, Illinois; the Selig Polyscope Company, of said Chicago, and the Vitagraph Company of America, of New York, all dated January 31, 1908; and

(d) Whereas, the Edison Company, the Licensee and the other licensees before mentioned under the said reissued Letters Patent, Numbered 12037 and 12192, have suspended the operation of the said license agreements; and

(e) Whereas, the Licensee is engaged in the manufacture and sale of motion pictures, including the printing of positive motion pictures from negative motion pictures of the Licensee's own production, and, relying upon the aforesaid representations of the Licensor, and induced thereby, desires to obtain from the Licensor a license under said two reissued Letters Patent Numbered 12037 and 12192, and Letters Patent Nos. 629063 and 707934, and to lease positive motion pictures for use in exhibiting or projecting machines containing the inventions, or any of them, described and claimed in said Letters Patent Nos. 578185, 580749, 586953, 588916, 673329, 673992, 707934, 722382, 744251, 770937, 771280,

785205, and 785237, and to sell positive motion pictures on film of a width approximately one (1) inch or less in certain territory and on film of any width in certain territory:

(f) Now therefore, the parties hereto, for and in consideration of the sum of one dollar to each in hand paid by the other, and for other good and valuable considerations from each to the other moving, receipt of all of which is hereby acknowledged, have agreed as follows:

1. The Licenser hereby grants to the Licensee for the term and subject to the covenants, conditions, and stipulations hereinafter expressed, the right and license under said reissued Letters Patent No. 12037 and Letters Patent Nos. 629063 and 707934, for the United States, its territories, dependencies, and possessions (hereinafter called the "territory aforesaid") to manufacture and use such a number of cameras embodying the inventions of said reissued Letters Patent No. 12037 and Letters Patent Nos. 629063 and 707934, as may be necessary for the proper conduct of the Licensee's business, and to manufacture, print and produce positive motion pictures embodying the inventions of said reissued Letters Patent No. 12192, and to lease the same in the United States, its territories, dependencies, and possessions (with the exceptions of its insular possessions and Alaska), hereinafter referred to as the "lease territory aforesaid," on film of a greater width than approximately one (1) inch, upon condition that they be used solely in exhibiting or projecting machines containing the inventions or some of them of said Letters Patent Nos. 578185, 580749, 586953, 588916, 673329, 673992, 707934, 722382, 744251, 770937, 771280, 785205 and 785237, and licensed by the Licenser, and to sell positive motion pictures embodying the invention of said reissued Letters Patent No. 12192, on film of a width approximately one (1) inch or less in the "lease territory aforesaid" and on film of any width in or for said insular possessions and Alaska and foreign countries, hereinafter referred to as "said export territory" or "for export."

The License hereby granted is personal to the Licensee and does not include the right to dispose of, in the "territory aforesaid," any cameras embodying any invention covered

by said reissued Letters Patent No. 12037 and Letters Patent No. 629063 and 707934; and, in the event of the permanent discontinuance or retirement from business of the Licensee for a period of six consecutive months, the license hereby granted shall be immediately terminated.

2. The Licensors, for itself, its successors, assigns and legal representatives, hereby releases, acquits, and discharges the Licensee from any and all claims, demands, and liability for profits and damages, because of any infringement by the Licensee of any or all of the aforesaid United Letters Patent Nos. 578185, 580749, 586953, 588916, 629063, 673329, 673992, 707934, 722382, 744251, 770937, 771280, 785205, and 785237, and reissued Letters Patent Nos. 12037 and 12192, or use by the Licensee of the inventions, or any of them, covered by said letters patent or either of them prior to the date hereof.

3. The Licensee hereby recognizes and admits the validity of said reissued Letters Patent No. 12037, so far as the first three claims thereof are concerned, and the validity of said reissued Letters Patent No. 12192 and Letters Patent Nos. 578185, 580749, 586953, 588916, 629063, 673329, 673992, 707934, 722382, 744251, 770937, 771280, 785205, and 785237, and the Licensee agrees not to contest or question the same during the continuance of this agreement.

4. The Licensee covenants and agrees that in the manufacture of motion pictures, both negative and positive in the "territory aforesaid," during the continuance of this agreement, the Licensee will use exclusively sensitized film manufactured and sold in the United States by a manufacturer or manufacturers authorized by the Licensors, such sensitized film hereinafter called "licensed film," and that the Licensee will not, in the "territory aforesaid," purchase or otherwise acquire or lease or sell or otherwise dispose of or deal in, motion pictures produced on or by the use of any other film than such "licensed film," nor sell or otherwise dispose of any negative motion pictures.

The Licensors further covenants and agrees that it will, in an agreement in writing with each manufacturer of "licensed film," obligate such manufacturer, so long as

the latter has the exclusive right to make and sell such "licensed film," not to knowingly furnish or sell, in the "territory aforesaid," except "for export," sensitized film for the commercial production of negative and positive motion pictures to anyone but the Licensee, and the additional licensees hereinafter provided for, except to the extent of $2\frac{1}{2}$ per cent of the total amount of such "licensed film" supplied by such manufacturer to the parties to the license agreements referred to in paragraph (c) during the year preceding June 20, 1909, and to the Licensee and the additional licensees hereinafter provided for, during any one year thereafter during the continuance of such agreement, which amount such manufacturer shall have the right to furnish or sell, in the "territory aforesaid," to persons not engaged in the business of manufacturing, leasing, selling, loaning, renting out, or otherwise disposing of or dealing in motion pictures in the "territory aforesaid"; and with the further exception that such manufacturer may also reserve the right to manufacture and sell sensitized film suitable for the commercial production of negative and positive motion pictures, of a width not to exceed approximately one (1) inch in the "territory aforesaid," to persons, firms, and corporations engaged in the business of manufacturing, leasing, selling, loaning, renting out, or otherwise disposing of or dealing in motion pictures in the "territory aforesaid," but upon the condition that in case any of them produces thereon any picture greater in size than approximately three-quarters ($\frac{3}{4}$) of an inch on a line either parallel to or at right angles to the edge of such film, and such manufacturer has knowledge thereof, such manufacturer will cease supplying such film to any person, firm, or corporation so doing; and with the further exception that such manufacturer may also reserve the right to manufacture and sell in the "territory aforesaid" such sensitized film suitable for the commercial production of negative and positive motion pictures of any width, to persons, firms, and corporations now having an established business of manufacturing motion pictures in any country foreign to the United States, who now manufacture negative and positive

motion pictures in the United States, or who may after the date of this agreement commence the manufacture of negative or positive motion pictures in the United States.

The Licensor further covenants and agrees that the royalties which it will charge to and receive from the Licensee for "licensed film" (and which are to be included by the manufacturer or manufacturers in the prices charged for "licensed film" to the Licensee and paid over to the Licensor) shall not, for "licensed film" of a width approximately one inch and three-eighths of an inch ($1\frac{3}{8}$ in.) or thirty-five (35) millimeters, purchased by the Licensee during the year preceding June 20, 1909, and during any year thereafter during the continuance of this agreement, as hereafter provided, exceeding the following rates; that is to say:

If the shipments of such "licensed film" to the Licensee, or the Licensee's orders, for any such year be four million running feet or less, a royalty of one-half ($\frac{1}{2}$) cent per running foot on the total number of running feet for that year; if such shipments, on the Licensee's orders, of such "licensed film" for any such year exceed four million running feet but do not exceed six million running feet, a royalty of four and one-half ($4\frac{1}{2}$) mills per running foot on the total number of running feet for that year; if such shipments, on the Licensee's orders, of such "licensed film" for any such year exceed six million running feet but do not exceed eight million running feet, a royalty of four (4) mills per running foot on the total number of running feet for that year; if such shipments, on the Licensee's orders, of such "licensed film" for any such year exceed eight million running feet but do not exceed ten million running feet, a royalty of three and three-quarters ($3\frac{3}{4}$) mills per running foot on the total number of running feet for that year; and if such shipments, on the Licensee's orders, of such "licensed film" for any such year exceed ten million running feet, a royalty of three and one-quarter ($3\frac{1}{4}$) mills per running foot on the total number of running feet for that year. And for "licensed film" narrower or wider than approximately one and three-eighths ($1\frac{3}{8}$ in.) inch or thirty-five (35) millimeters, the above-mentioned royalty rates shall be reduced or increased

in proportion to the reduction or increase in width of such narrower or wider "licensed film" below or above the width of such "licensed film" of approximately one and three-eighths ($1\frac{3}{8}$ in.) inch or thirty-five (35) millimeters.

The Licensor and Licensee further mutually covenant and agree that the manufacturer of such "licensed film" shall in the first instance—that is to say, when such film is billed and shipped by it—charge the Licensee with its price per running foot plus the maximum royalty aforesaid, and on the expiration of each year, counting from June 20th, 1909, shall adjust the royalty account of the Licensee as to "licensed film" so billed and shipped to and paid for by the Licensee, according to the royalty schedule aforesaid, returning to the Licensee any amount the Licensee shall have overpaid, according to said schedule, and paying the balance to the Licensor; and that the royalties which may hereafter be paid to the manufacturer of such "licensed film" after the date hereof and up to June 20, 1909, under this agreement, shall be adjusted and the excess returned, in the same manner, the royalty rate to be charged for such period being the rate that would have been charged if the shipments of "licensed film" to the Licensee had been continued for a year at the same rate at which shipments were made for such period.

The Licensor further agrees that the dealings between the Licensee and the authorized manufacturer or manufacturers from whom the Licensee purchases such "licensed film" shall, in so far as the number of running feet ordered by or shipped to the Licensee or anything that would indicate or disclose the number of such feet is concerned, be a matter of confidence between the Licensee and such manufacturer or manufacturers, who shall not be at liberty to disclose, and moreover shall be bound in writing not to disclose, directly or indirectly, to the Licensor or any of the additional licensees hereinafter provided for, the number of such feet of "licensed film" so ordered by or shipped to the Licensee; the Licensor further agreeing to so arrange or provide for the reports and royalty payments to be made to it by such manufacturer or manufacturers that the

latter shall make such reports and royalty payments in gross as to all of the licensees to whom shipments of such "licensed film" are made, and without specifying the number of running feet of "licensed film" so shipped to any of them, either by a statement in writing of the number of such feet or the amount of royalties paid or to be paid by such manufacturer or manufacturers for or on account thereof.

The Licensors and Licensee further mutually covenant and agree that no royalty other than or in addition to that provided for in this paragraph shall be charged to or collected from the Licensee by the Licensors up to June 20, 1910, or during any renewal of this agreement up to August 31, 1914, the date of the expiration of said reissued Letters Patent Nos. 12037 and 12192, and no royalty whatever shall be charged to or collected from the Licensee by the Licensors after either the first, second, and third claims of said reissued Letters Patent No. 12037 and either of the claims of said reissued Letters Patent No. 12192, in any suit as hereinafter provided for, for infringement thereof, are held invalid by a court that last hears and decides such suit, or after August 31, 1914, during any renewal of this agreement; and that the Licensors shall charge royalties or rents for the use of all exhibiting or projecting machines capable of exhibiting or projecting motion pictures on film of a width greater than approximately one (1) inch, containing the inventions, or any of them, described and claimed in the aforesaid Letters Patent Nos. 578185, 580749, 586953, 588916, 673329, 673992, 707934, 722382, 744251, 770937, 771280, 785205, and 785237, licensed by the Licensors and that all such royalties or rents shall be collected by the Licensors, directly or indirectly from the exhibitors using such machines, and shall be fixed by the Licensors and charged and collected from such exhibitors by the Licensors at such a rate as to average as nearly as possible a royalty or rental of two dollars (\$2.00) per week for each such licensed machine in use.

5. The Licensee further covenants and agrees not to sell or otherwise dispose of or offer for sale, in the "territory

aforesaid," unexposed positive or negative "licensed film" during the continuance of this agreement; but this provision shall not prevent the Licensee from selling as refuse, in the "territory aforesaid," second-hand positive or negative motion pictures or motion pictures which have been used or become shopworn or in any way damaged, to a manufacturer or manufacturers of "licensed film" or to a manufacturer to manufacture other articles than film therefrom, but only after they have been rendered by the Licensee unsuitable for use as motion pictures by cutting or otherwise defacing them; or from selling exposed positive or negative film (either waste or in rolls) known as "blank film" for use by dealers, renters, or exhibitors for leaders or for spacing or for similar purposes, but which shall not and can not be otherwise employed for the exhibition of motion pictures.

6. The Licensee further covenants and agrees not to lease, loan, rent out, sell or offer for sale, or otherwise dispose of in the "territory aforesaid," motion pictures to anyone purchasing or otherwise obtaining, leasing, using, loaning, renting out, selling, offering for sale, or otherwise disposing of or dealing in motion pictures containing the invention of said reissued Letters Patent No. 12192, not the output of the Licensee or of the additional licensees hereinafter provided for.

7. The Licensee further covenants and agrees to mark each and every camera which the Licensee may make or use under this agreement embodying the inventions of reissued Letters Patents No. 12037, Letters Patent Nos. 629063 and 707934, or either of them, with the word "Patented" followed by the dates of grant of all of the said letters patent, the inventions claimed in which are embodied in the said camera or apparatus, and to photographically print the Licensee's trade-mark in each picture of at least one scene of each subject of positive motion pictures on film of a greater width than approximately one (1) inch manufactured by the Licensee and leased in the "lease territory aforesaid," and to mark conspicuously on the labels which shall be placed on boxes or packages containing positive motion pictures on film of a greater width than

approximately one (1) inch manufactured by the Licensee in the "territory aforesaid," with the following words and figures:

LICENSED MOTION PICTURE.

Manufactured and leased by and property of

(Patented in the United States August 31, 1897; reissued January 12, 1904).

The enclosed motion picture is leased only and upon the following terms and conditions:

1. That the lessee shall not sell or otherwise dispose of the same outright, but shall have only the right to sublet or use such motion picture.

2. That the lessee shall permit such motion pictures to be exhibited only on motion picture projecting machines licensed by the Motion Picture Patents Company of New Jersey under its patents covering such projecting machines.

3. That the lessee shall not sublet such motion picture or any other motion picture containing the invention of the above reissued patent for use in any motion-picture exhibitions at a lower subrental price, directly or indirectly, than that agreed upon (if any) in the contract of lease between the lessee and the lessor of this picture.

4. That the lessee or user thereof shall not make or permit others to make any reproduction, commonly known as a "dupe," of such motion picture or any other motion picture containing the inventions of the above reissued patent.

5. That the lessee or user thereof shall not remove the trade-mark or trade name or title therefrom.

6. That the violation of any of the foregoing conditions entitles the lessor to immediate possession of this motion picture without liability for any price which the lessee or the person in whose possession it is found may have paid therefor.

The Licensor further covenants and agreed to use all possible diligence in licensing exhibiting or projecting machines now in use in the "lease territory aforesaid",

embodying any or all of the inventions described and claimed in the said Letters Patent Nos. 578185, 580749, 586953, 588916, 673329, 673992, 707934, 722382, 744251, 770937, 771280, 785205, and 785237, and that royalties or rents from the users of such exhibiting or projecting machines will not be exacted, directly or indirectly, until February 1st, 1909.

8. The Licensee further covenants and agrees not to use, in the production of negative or positive motion pictures, under this agreement, the negative or positive motion pictures (or reproductions commonly known as "duplicates" of the negative or positive motion pictures), of any other manufacturer or person, firm, or corporation located either in the "territory aforesaid" or in any foreign country, whether the same have or have not been copyrighted in the "territory aforesaid" or in any foreign country.

9. The Licensor has established the following scale of minimum prices (which the Licensee admits is a fair and reasonable one) for the lease of positive motion pictures on film of a greater width than approximately one (1) inch in the "lease territory aforesaid," embodying the invention of said reissued Letters Patent No. 12192:

List.....	13 cents per running foot.
Standing order.....	11 cents per running foot.
Films leased between two and four months after release date.....	9 cents per running foot.
Films leased between four and six months after release date.....	7 cents per running foot.
Films leased over six months after release date.....	5 cents per running foot.

The Licensor and Licensee further mutually covenant and agree that the above scale of minimum prices is to remain in force until a new scale of prices is adopted, each such new scale to be adopted, during the continuance of this agreement, by a majority vote to be forthwith communicated to the Licensor of the Licensee and the several additional licensees hereinafter provided for, or such of them as may at the time be licensees on the basis of one vote for each thousand running feet of new subjects on film of a greater width than approximately one (1) inch offered for lease or sale in the "territory aforesaid" by each licensee during the year preceding the taking of such vote; and

they further covenant and agree that any changes which may hereafter be so made and communicated to the Licensor in said scale of prices, and of which the Licensee shall be notified in writing by the Licensor, shall be accepted and adopted by the Licensee in the place and stead of the scale of prices above given or of any substitute or substitutes therefor adopted prior to such change. It is, however, expressly mutually covenanted and agreed that in no case shall such new scale of prices, either list or standing order, be less than nine (9) cents per running foot for any motion picture leased within four months of the date of release of the said motion picture.

By the expression "running feet of new subjects" above referred to, and hereafter used, the parties hereto mean the aggregate amount ascertained by adding together the individual number of running feet of one print of each and every new motion picture on film of a greater width than approximately one (1) inch, regularly listed and offered for lease in the "lease territory aforesaid."

The Licensor and Licensee further mutually covenant and agree that in case, during the continuance of this agreement, there should be for any reason only three such licensees, then, and in such case, the Licensor may adopt a minimum scale of prices in the place and stead of the minimum scale of prices above given or of any substitute or substitutes therefor adopted in the manner above provided, which, however, shall in no case be above the minimum scale of prices that may be in force at the time the Licensor adopts the said new minimum scale of prices, which said new minimum scale of prices shall be binding upon the Licensee, but only after receiving notice thereof in writing from the Licensor.

10. The Licensor and Licensee further mutually covenant and agree that an order in the "lease territory aforesaid," for one or more positive motion pictures of each and every new subject made by the Licensee (except chrono-photographic subjects and other special subjects that are announced and advertised as special by the Licensee and of which no copy or print is leased by the Licensee for less than list price within two (2) months after release date) when

offered for lease in the regular order of business, shall constitute a "standing order" within the meaning of the scale of prices aforesaid or any substitute therefor hereafter adopted, said standing order to remain in force for not less than fourteen (14) consecutive days; and the parties hereto further mutually covenant and agree that the minimum price at which any additional positive motion pictures shall be leased, in the "lease territory aforesaid," subsequent to the filling of a standing order, shall be the same per running foot as the pictures furnished on such standing order, unless otherwise provided for in the scale of prices aforesaid or any substitute therefor hereafter adopted. All positive motion pictures which may be hereafter leased in the "lease territory aforesaid," to persons not having a standing order, as above defined, shall in every case be leased at not less than the list price mentioned in said scale of prices or any substitute therefor hereafter adopted, except it be otherwise provided by a majority vote of the Licensee and the several additional licensees hereinafter provided for, or such of them as may at the time be licensees, on the basis of one vote for each thousand running feet of new subjects, on film of a greater width than approximately one (1) inch, offered for lease or sale in the "territory aforesaid" by each licensee during the year preceding the taking of such vote, and except as provided for in paragraph 12 as to "special motion pictures."

11. The Licensors and Licensee further mutually covenant and agree that positive motion pictures made by or for the Licensee and unsold prior to the date hereof, shall be subject to the scale of prices aforesaid and shall be leased in the "lease territory aforesaid" at not less than the prices fixed in said scale for positive motion pictures as provided for in paragraphs 9 and 10.

12. The Licensors and Licensee further mutually covenant and agree that in the case of so-called "special motion pictures" (where it is agreed by the Licensee that the negative shall be the exclusive property of the person ordering the same, although remaining in the care and custody of the Licensee, and where positive prints therefrom shall be made from time to time on the order of such person), the price to

be paid for the making of such negative in the "territory aforesaid" shall not be less than one dollar (\$1) per running foot, and that the price at which positive prints therefrom shall be leased in the "territory aforesaid," shall not be less than fifteen (15) cents per running foot.

13. The Licensee further covenants and agrees not to lease motion pictures in the "lease territory aforesaid," under any circumstances, either directly or indirectly, during the continuance of this agreement, at lower prices than those fixed and established as provided for in paragraphs 9, 10, 11, and 12.

14. It is further and mutually covenanted and agreed by the Licensors and Licensee that the Licensee shall have the right to sell motion pictures in or for "said export territory," and that the prices above referred to in paragraphs 9, 10, 11, and 12, or any substitute or substitutes for the same hereafter adopted, shall not apply to sales or shipments of motion pictures made *bona fide* for export, when the goods, addressed to the purchaser, agent, or consignee, are delivered to the vessel or to a transportation company for transportation to "said export territory," and not otherwise.

The Licensors and Licensee further mutually covenant and agree that in no case shall sales "for export" of motion pictures be knowingly made by the Licensee to persons, firms, or corporations whom such Licensee has reason to believe will reimport them into the "lease territory aforesaid" for sale or use.

15. The Licensors and the Licensee further mutually covenant and agree that, except as provided for in paragraph 5, the Licensee will not sell or lease, or offer for sale or lease in the "territory aforesaid" at reduced prices, second-hand motion pictures or motion pictures which have been used or which have become shopworn or in any way damaged.

16. The Licensors and the Licensee further mutually covenant and agree that in the "lease territory aforesaid," all leases of positive motion pictures shall be at the prices hereinbefore provided for, without the allowance of any discounts or rebates or other reduction (except such as may be

adopted by the unanimous votes of all the licensees) by which a lessee might acquire positive motion pictures at lower prices than those set forth in Paragraphs 9, 10, 11, and 12, or any substitutes therefor hereafter adopted, and that the Licensee will not dispose of such positive motion pictures as premiums, or by lottery, or raffle, or any game of chance, or in any way whereby they may be acquired directly or indirectly for less than the prices set forth in paragraphs 9, 10, 11, and 12, or substitutes therefor.

The Licensee further covenants and agrees that, in the "lease territory aforesaid," the Licensee will not sell or offer for sale other goods or merchandise at less than current prices in order to induce the lease of positive motion pictures, nor present or donate other goods or merchandise or prizes, or make use of credit cards or trading stamps, or offer any premiums of any kind whatsoever to induce the lease of such positive motion pictures.

17. It is further mutually covenanted and agreed by and between the Licensors and Licensee that no lease of positive motion pictures on film of a greater width than approximately one (1) inch shall be made in the "lease territory aforesaid" by the Licensee, except upon and subject to the following terms and conditions, the substance of which (with the exception of the condition as to the return of positive motion pictures hereinafter referred to) shall be expressed in a printed notice on the labels, as provided for in paragraph 7, accompanying each positive motion picture, namely: (1) That the lessee of such positive motion picture shall not sell or otherwise dispose of the same outright, but shall only have the right to use such positive motion picture in giving motion-picture exhibitions in machines licensed by the Licensors under the said letters patent Nos. 578185, 580749, 586953, 588916, 673329, 673992, 707934, 722382, 744251, 770937, 771280, 785205, and 785237, or one or more of them, or under any other letters patent that it may hereafter acquire or control, or to sublease such motion picture for use in such machines, and that (2) the lessee shall not make or permit others to make any reproduction commonly known as a "dupe" of such positive motion picture or any other

positive motion picture containing the invention of said reissued Letters Patent No. 12192, or (3) sublease the same or any other positive motion picture on film of a greater width than approximately one (1) inch containing the invention of said reissued Letters Patent No. 12192, for use in giving motion-picture exhibitions at a lower lease price directly or indirectly than that prescribed by the Licensee at the time of the lease of such motion picture, and (4) that the lessee of such positive motion picture shall not remove the trade mark or trade name or title therefrom, and (5) that the lessee shall return to the Licensee from whom such positive motion picture has been leased (without any payment therefor except the transportation charges incident to the return of the same) on the first day of every month, beginning with February 1, 1909, an amount of positive motion pictures (on film of a greater width than approximately one (1) inch) in running feet (not leased by the Licensee over six months before) and of the make of the licensee, to whom it is returned, equal to the amount that was so leased during the sixth month preceding the date of each such return; with the exception, however, that where any such positive motion pictures are destroyed by fire or lost in transportation, and proof satisfactory to the Licensee is furnished as to such destruction or loss, the amount so destroyed or lost shall be deducted from the amount to be returned, as aforesaid.

It is further mutually covenanted and agreed by and between the Licensor and Licensee that the subleasing price aforesaid for subleasing of positive motion pictures, on film of a greater width than approximately one (1) inch, shall be fixed (and which may be changed in the same manner during the continuance of this agreement, as may also the fifth condition before recited in this paragraph) by a majority vote of the Licensee and the several additional licensees hereinafter provided for, or such of them as may at the time be licensees, on the basis of one vote for each thousand running feet of new subjects, on film of a greater width than approximately one (1) inch, offered for lease or sale in the "territory aforesaid" by each licensee during the year preceding the taking of such vote.

The Licensee further covenants and agrees that in the "lease territory aforesaid" the Licensee will not discriminate in favor of any lessee, or place upon any motion pictures any restrictions other than those specified in this paragraph and paragraph 7 hereof, unless authorized by a majority vote of the Licensee and the several additional licensees hereinafter provided for, or such of them as may at the time be licensees.

18. The Licensee covenants and agrees that in the "lease territory aforesaid" the Licensee will dispose of the positive motion pictures, on film of a greater width than approximately one (1) inch, manufactured, produced, or printed by the Licensee, only by the sale "for export" and shipment thereof into "said export territory" or by the lease thereof to others for the purpose only of either subleasing the same to persons, firms, or corporations using such motion pictures for giving exhibitions thereof in exhibiting or projecting machines licensed by the Licensor containing the inventions, or some of them, described and claimed in said Letters Patent Nos. 578185, 580749, 586953, 588916, 673329, 673992, 707934, 722382, 744251, 770937, 771280, 785205, and 785237, or in letters patent hereafter acquired or controlled by the Licensor, or of using the same in such machines so licensed; and will not use the same for the purpose of giving exhibitions thereof for profit, directly or indirectly; it being expressly understood and agreed by and between the Licensor and Licensee, however, that the Licensee shall be at liberty to give exhibitions of such positive motion pictures without profit, directly or indirectly, and to possible or prospective lessees or purchasers thereof; and the Licensee further covenants and agrees not to knowingly allow positive motion pictures, on film of a greater width than approximately one (1) inch, manufactured by the Licensee under this agreement, to be leased for use with any exhibiting or projecting machine not licensed by the Licensor under the letters patent mentioned in this paragraph, and that it may hereafter acquire or control, or one or more of them, except by and with the consent of the Licensor; and also to refrain from supplying such motion pictures manufactured or imported under this agreement, for use with any exhibiting or projecting machine the

license for which, under the aforesaid letters patent, or one or more of them, has been terminated, and the Licensee has been notified thereof by the Licensor; and also to refrain from supplying such motion pictures manufactured and imported under this agreement to any lessee who may sublet such motion pictures to persons, firms, or corporations using the same for giving exhibitions thereof in exhibiting or projecting machines not licensed by the Licensor as aforesaid, or the license for which has been terminated and the Licensee has been notified by the Licensor that any such lessee continues to so sublet such motion pictures after being notified by the Licensor not to do so; and the Licensor covenants and agrees to promptly notify any such lessee who may so sublet such motion pictures, after it has knowledge of any such subletting, and to notify the Licensee and the additional licensees hereafter provided for, or such of them as may at the time be licensees, of the termination of any license for the use of any exhibiting or projecting machines under the aforesaid letters patent, or any of them, and of any such lessee who may so sublet such motion pictures, after being notified by it not to do so, and to compel all such additional licensees to refrain from supplying motion pictures for use with any such exhibiting or projecting machine the license for which has been so terminated, or to any such lessee.

19. The Licensor and Licensee further mutually covenant and agree that the Licensor shall and will, during the continuance of this agreement, promptly institute suits against any and all infringers of the letters patent, or any of them, mentioned in this agreement, on the request of a majority of the licensees, including the Licensee and the several additional licensees hereinafter provided for, or such of them as may at the time be licensees, and will thereafter diligently prosecute any such suit or suits to final hearing and decision; all expense connected with the institution and prosecution of such suit or suits to be borne by the Licensor, who shall also be entitled to receive and apply to its own use all recoveries had therein for damages and profits.

The Licensor and Licensee further mutually covenant and agree that if in case any such suit is brought upon said reissued Letters Patent Nos. 12037, 12192, or said Letters Patent Nos. 586953 or 722382, either of the claims of said reissued Letters Patent No. 12192 or either of the first, second, or third claims of said reissued Letters Patent No. 12037, or any of the claims in issue in any such suit upon said Letters Patent Nos. 586953 or 722382, is or are held invalid by a court that last hears and decides such suit, or should be held by such court not to be infringed, then, and in any such case, the Licensee may at once terminate this agreement and the license thereby granted, by giving notice of its election so to do to the Licensor.

The Licensor and Licensee further mutually covenant and agree that the Licensor may, at its own expense (except as hereinafter provided), during the continuance of this agreement, institute and prosecute suits against any of the several additional licensees hereinafter provided for, for any breach or violation on the part of any such licensee of the covenants respecting prices at which positive motion pictures shall be leased in the "lease territory aforesaid," and also for violation of any of the other terms, conditions, or stipulations entered into by such licensee; that the Licensor shall at the end of each year, counting from the day and year first above written, render to the Licensee and the other licensees hereinafter provided for, or such of them as may at the time be licensees, a statement in writing showing in detail all legal expenses incurred by it during such year in the prosecution of such suit or suits; and that up to, but not exceeding, the sum of twenty thousand dollars (\$20,000) for any such year, all such legal expenses, in so far as they may be reasonable and proper, shall be borne and paid by the Licensee and the several additional licensees hereinafter provided for, *pro rata* according to the number of thousand running feet of new subjects, offered for lease by each relatively to the total number of thousand running feet of new subjects, on film of a greater width than approximately one (1) inch, offered for lease or sale by all in the "territory aforesaid," during the year preceding the rendition of such statement, any legal

expenses in excess of said twenty thousand dollars (\$20,000) during any such year to be borne and paid by the Licensor unless the Licensor and the Licensee and the several additional licensees hereinafter provided for should hereafter mutually agree otherwise.

20. It is mutually covenanted and agreed by and between the Licensor and Licensee that the Licensor may grant other licenses under said reissued Letters Patent Nos. 12037 and 12192 and said Letters Patent Nos. 629063 and 707934, so far as the use of the inventions thereof in cameras is concerned, said licenses to be in writing and not to exceed nine in number, seven to be to the persons and corporations mentioned in paragraph *c* as having license agreements with the Edison Company, one to the Edison Company, and one to George Kleine, of Chicago, Illinois (except by a majority vote of the Licensee and the nine other licensees, or such of them as may at the time be licensees, on the basis of **one** vote for each thousand running feet of new subjects, on film of a greater width than approximately one (1) inch, offered for lease or sale in the "territory aforesaid" by such licensees during the year preceding the taking of such vote), and not to be granted or continued upon terms, conditions, or stipulations which are in any respect more favorable to the licensees named therein than those set forth in this agreement (except to the Edison Company, and it shall only be more favorable to it in the matter of the payment of royalties to the Licensor), and in the case of the license to George Kleine it shall be so restricted as to prohibit said Kleine from manufacturing negative motion pictures in "the territory aforesaid," and from manufacturing from imported negative motion pictures positive motion pictures, and importing positive motion pictures in all more than three thousand "running feet of new subjects" per week: *Provided, however*, That if any of such additional nine licenses should be terminated during the continuance of this agreement, then and in each such case the Licensor may grant a license in writing to some other motion-picture manufacturer, but not on terms, conditions, or stipulations which are more favorable as to such new licensee than those set forth in this agreement.

It is further mutually covenanted and agreed by and between the Licensor and the Licensee that the Licensor will, during the continuance of this agreement, license such a number of persons, firms, or corporations under said Letters Patent Nos. 578185, 580749, 586953, 588916, 673329, 673992, 707934, 772382, 744251, 770937, 771280, 785205, and 785237, to make and sell exhibiting or projecting machines containing the inventions described and claimed in the same, capable of exhibiting or projecting motion pictures on film of a width greater than approximately one (1) inch, and also such machines not capable of exhibiting or projecting motion pictures on film of a greater width than approximately one (1) inch, as will be able to supply the demand for the same; and that it shall not, and it hereby covenants and agrees that it will not, during the continuance of this agreement, license any person, firm, or corporation under said letters patent or any of them to make or sell any such exhibiting or projecting machine containing any of the inventions described and claimed in said letters patent, and capable of exhibiting or projecting motion pictures on film of a width greater than approximately one (1) inch, except upon the conditions and restrictions that the sale and purchase of such machine gives only the right to use it solely for exhibiting or projecting motion pictures containing the inventions of said reissued Letters Patent No. 12192 leased by a licensee of the Licensor, while it owns or controls the letters patent under which such machine is licensed and upon other terms to be fixed by the Licensor while in use, and while the letters patent under which it is licensed are owned or controlled by the Licensor (which other terms shall only be the payment of a royalty or rental to the Licensor while in use, as hereinbefore provided for), and that there shall be attached to each such machine, in a conspicuous place, a plate, which is not to be removed therefrom, showing plainly not only the dates of the letters patent under which it is licensed, but also the aforesaid conditions or restrictions.

The Licensor further covenants and agrees that it will not charge any such person, firm, or corporation manufacturing and selling any such machine capable of exhibit-

ing or projecting motion pictures on a film of a width greater than approximately one (1) inch, more than five dollars (\$5) as a license fee for the sale of each such exhibiting or projecting machine sold by any such person, firm, or corporation.

The Licensor further covenants and agrees that it will not license any person, firm, or corporation to make or sell any exhibiting or projecting machine containing any of the inventions described and claimed in the aforesaid letters patent which is not capable of exhibiting or projecting motion pictures on film of a width greater than approximately one (1) inch, except upon the conditions and restrictions that such machine be used solely for exhibiting or projecting motion pictures on film not wider than approximately one (1) inch, in places where no admission fee is charged, and that there shall be attached to each such machine in a conspicuous place, a plate, which is not to be removed therefrom, showing plainly, not only the dates of the letters patent under which it is licensed, but also the aforesaid conditions or restrictions, and that the Licensor will not charge to any person, firm, or corporation making or selling any such machine a license fee of more than 5 per cent of the net retail selling price of each such machine.

The Licensor further covenants and agrees that it will grant a license to the Licensee, upon its request, to manufacture and sell exhibiting or projecting machines under the letters patent, and upon the condition as to the payment of the license fees or royalties and the other conditions and restrictions, as provided for in this paragraph, and will also grant similar licenses upon the same conditions as to the payment of the license fees or royalties and the other conditions and restrictions, to such of the additional licensees hereinbefore provided for who may request the same, except that the said American Mutoscope & Biograph Company is not to pay any such license fees or royalties; and will also grant a license to the Licensee and any such additional licensees who may request the same, to make and sell exhibiting or projecting machines under any other letters patent and containing the inventions described and claimed therein that the Licensor may here-

after acquire or control, upon the payment of additional license fees or royalties to be fixed by the Licensor, and subject to similar conditions and restrictions and the placing upon the machines of plates containing such conditions and restrictions as are provided for in this paragraph respecting exhibiting or projecting machines made and sold under the letters patent now owned by the Licensor mentioned in this paragraph, the royalty or license fee, and all other conditions and restrictions of such last-named licenses to be the same for the Licensee and such other licensees.

It is mutually covenanted and agreed, however, by and between the Licensor and Licensee that the Licensor shall have the right to grant, and that it will grant, licenses to persons, firms, and corporations upon their request (including the Licensee) to manufacture and sell exhibiting or projecting machines containing the inventions described and claimed in the aforesaid letters patent now owned by the Licensor, capable of exhibiting or projecting, by reflected light, animated pictures on film of any width, but not capable of exhibiting or projecting the same by transmitted light, upon the payment of a royalty or license fee not to exceed 5 per cent of the net retail selling price of each such machine, and upon the condition that they be used only in places where no admission fee is charged, which condition shall appear on a plate to be attached to each such machine; and also that it will grant licenses to such persons, firms, and corporations to manufacture and sell such exhibiting or projecting machines containing the inventions described and claimed in any letters patent that the Licensor may hereafter own or control, subject to similar conditions or restrictions and upon the payment of additional license fees or royalties to be fixed by the Licensor; the royalty or license fee, and all the conditions and restrictions of all such licenses, to be the same for the Licensee and such other licensees.

20a. It is further mutually covenanted and agreed by and between the Licensor and Licensee that in case the Licensor should be notified by the Licensee or it should otherwise come to its knowledge that any such additional

Licensee has knowingly or through gross neglect or carelessness broken, violated, or failed to perform any of the terms, conditions, or stipulations of the license granted by the Licensor, resulting in substantial injury to the Licensor, or the Licensee or the additional Licensees aforesaid, the Licensor will promptly notify such Licensee in writing of such breach, violation, or nonperformance, and if such Licensee should, for a period of forty (40) days after such notice, persist in or fail to correct, repair, or remedy the same, the Licensor shall at once terminate the license to such Licensee; and that in case any such Licensee should be guilty of a second grossly neglectful, careless, or knowing breach, violation, or nonperformance of such terms, conditions, or stipulations, resulting in substantial injury to the Licensor, or the Licensee or the additional Licensees aforesaid, then, and in such case, the Licensor shall terminate the license to such Licensee by giving the latter thirty (30) days' notice in writing of its intention so to do.

20b. The Licensor and Licensee further mutually covenant and agree that by the expression "motion pictures," as used in the foregoing agreement, is meant transparent or translucent tape-like film having photographs thereon of objects in motion.

21. It is further mutually covenanted and agreed by and between the Licensor and Licensee that unless sooner terminated, as hereinbefore or hereinafter provided, this agreement and the license granted thereby shall take effect January 1, 1909, and shall continue until June 20, 1910, but that the Licensee may renew this agreement and license thereafter from year to year upon the same terms, conditions, and stipulations as herein provided, by giving notice to the Licensor on or before April 20 of each year, beginning with the year 1910, of the Licensee's election to so renew this agreement and license, and upon the giving of each such notice this agreement and the license thereby granted shall be considered and treated by the Licensor and Licensee as renewed for a period of one year, beginning June 20 of the year following such notice, except that the last renewal

period shall be for the period from June 20, 1914, to August 26, 1919, the date of expiration of the Letters Patent No. 707934.

It is further mutually covenanted and agreed by and between the Licensor and Licensee that if, during said original term or during any such renewal period, either party should, knowingly or through gross neglect or carelessness, be guilty of a breach, violation, or nonperformance of its covenants, conditions, and stipulations, resulting in substantial injury to the other party, and should, for the period of forty (40) days after notice thereof from the other party, persist therein or fail to correct, repair, or remedy the same, then and in such case the party aggrieved may terminate this agreement by giving notice in writing to the guilty party of its intention so to do. It is, however, mutually covenanted and agreed by and between the Licensor and Licensee, that if the guilty party should correct, repair, or remedy such breach, violation, or nonperformance of its covenants, conditions, and stipulations within the said period of forty (40) days after such notice, and should thereafter knowingly or through gross neglect or carelessness be guilty of a second breach, violation, or nonperformance of its covenants, conditions, and stipulations, resulting in substantial injury to the other party, then and in such case, the party aggrieved may terminate this agreement by giving thirty (30) days' notice in writing to the guilty party of its intention so to do. Such termination of the agreement, however, shall not prejudice either party hereto in the recovery of damages because of any such breach, violation, or nonperformance by the other party hereto.

22. All notices provided for in this agreement shall be in writing and shall be given by delivering the same to the Licensor or Licensee, as the case may be, or to an officer of the Licensor or Licensee, as the case may be, or by depositing such notice, postage prepaid, in any post office of the United States, in a sealed envelope directed to the Licensor or the Licensee, as the case may be, at its last known post-office address, to be forwarded by registered mail.

23. It is mutually covenanted and agreed by and between the Licensor and Licensee that after notice of the termination

of this agreement and the license granted thereby by either party, as provided for in paragraphs 19 and 21 of this agreement, and after the same have been terminated, no matter what the cause or manner of termination may be, neither this license agreement, nor the fact that the Licensee has entered into or acted under it, shall be used in any manner, directly or indirectly, by or for the Licensor, its successors, assigns, or legal representatives, or by or for others with its or their consent or permission, against the Licensee, or the Licensee's successors or legal representatives, in any litigation, controversy, or proceeding involving the Licensee or them or any other persons, firms, or corporations, or in any other way, it being understood and agreed that upon such termination the positions and rights of the Licensor and Licensee shall be the same as if this agreement had not been made; *provided, however*, that the rights of neither party shall be prejudiced by such termination in the recovery of damages for any breach or other violation of this agreement by the other occurring prior to such termination.

In witness whereof the parties hereto have caused this agreement to be executed by their officers duly authorized to perform these acts, the day and year first above written.

[SEAL.]

MOTION PICTURE PATENT COMPANY,
By FRANK L. DYER, *President*.

Attest:

GEORGE F. SCULL, *Secretary*.

[SEAL.] AMERICAN MUTOSCOPE AND BIOGRAPH COMPANY,
By J. J. KENNEDY, *President*.

Attest:

W. H. BRUENNER, *Secretary*.

EXHIBIT 4.

FORM OF LICENSE AGREEMENT BETWEEN MOTION PICTURE PATENTS COMPANY AND THE RENTAL EXCHANGES.

EXCHANGE LICENSE AGREEMENT.

Whereas the Motion Picture Patents Company, of New York City (hereinafter referred to as the "Licensor") is the owner of all the right, title, and interest in and to reissued Letters Patent No. 12192, dated January 12, 1904, granted to Thomas A. Edison for kinetoscopic film, and also Letters Patent Nos. 578185, 580749, 586953, 588916, 673329, 673992, 707934, 722382, 744251, 770937, 771280, 785205, and 785237, for inventions relating to motion picture projecting machines; and

Whereas the Licensor has licensed the American Mutoscope and Biograph Company, of New York City; the Edison Manufacturing Company, of Orange, New Jersey; the Essanay Company, of Chicago; the Kalem Company, of New York City; George Kleine, of Chicago; Lubin Manufacturing Company, of Philadelphia; Pathe Freres, of New York City; the Selig Polyscope Company, of Chicago; and the Vitagraph Company of America, of New York City (hereinafter referred to as "Licensed Manufacturers or Importers"), to manufacture or import motion pictures under said reissued letters patent and to lease licensed motion pictures (hereinafter referred to as "Licensed Motion Pictures") for use on projecting machines licensed by the Licensor; and

Whereas the undersigned (hereinafter referred to as the "Licensee"), desires to obtain a license under said reissued Letters Patent No. 12192, to lease from the Licensed Manufacturers and Importers licensed motion pictures and to sublet the said licensed motion pictures for use on projecting machines licensed by the Licensor;

Now, therefore, the parties hereto, in consideration of the covenants herein, have agreed as follows:

(1) The Licensor hereby grants to the Licensee for the term and subject to the conditions expressed in the "Conditions of license" hereinafter set forth, the license, under the said reissued Letters Patent No. 12192, to lease licensed motion pictures from the Licensed Manufacturers and Importers and to sublease said license motion pictures for use only on projecting machines licensed by the Licensor under letters patent owned by it.

(2) The Licensee covenants and agrees to conform with and strictly adhere to and be bound by all of the "Conditions of license," hereinafter set forth, and to and by any and all future changes in or additions thereto, and further agrees not to do or suffer any of the acts or things thereby prohibited, and that the Licensor may place and publish the Licensee's name in its removal or suspended list in the event of the termination of this agreement by the Licensor, or in case of any violation thereof, and may direct the Licensed Manufacturers and Importers not to lease licensed motion pictures to the Licensee, the Licensee hereby expressly agreeing that such Licensed Manufacturers and Importers shall have the right to cease such leasing when so directed by the Licensor; and the Licensee further agrees that the signing of this agreement constitutes a cancellation of any or all agreements for the sale of licensed motion pictures made prior to this agreement by and between the Licensee and any or all licensed manufacturers or importers, except as to any clause in said agreements relating to the return of motion-picture film to the several licensed manufacturers or importers. It is further understood and agreed by the Licensee that the license hereby granted is a personal one and not transferable or assignable, and the Licensee hereby recognizes and acknowledges the validity of the said reissued Letters Patent No. 12192.

CONDITIONS OF LICENSE.

1. From the date of this agreement the Licensee shall not buy, lease, rent, or otherwise obtain any motion pictures other than licensed motion pictures and shall dispose of any motion pictures only by the subleasing thereof under the conditions hereinafter set forth.

2. The ownership of each licensed motion picture leased under this agreement shall remain in the Licensed Manufacturer or Importer from whom it may have been leased, the Licensee, by the payment of the leasing price acquiring only the license to sublet such motion picture subject to the conditions of this agreement. Such license for any motion picture shall terminate upon the breach of this agreement in regard thereto, and the Licensed Manufacturer or Importer from whom it may have been leased shall have the right to immediate possession of such motion picture, without liability for any leasing price or other sum which the Licensee or the person in whose possession said motion picture is found may have paid therefor.

3. The Licensee shall not sell nor exhibit licensed motion pictures obtained from any Licensed Manufacturer or Importer, either in the United States or elsewhere, but shall only sublet such licensed motion pictures and only for use in the United States and its Territories and only to exhibitors who shall exclusively exhibit licensed motion pictures, but in no case shall the exhibitor be permitted to sell or sublet or otherwise dispose of said licensed motion pictures.

4. The leasing price to be paid by the Licensee to the Licensed Manufacturers or Importers, or the terms of payment for or shipment of licensed motion pictures, shall in no case be less or more favorable to the Licensee than that defined in the leasing schedule embodied in this agreement, or any other substitute leasing schedule, which may be regularly adopted by the Licensor, and of which notice shall be given to the Licensee hereafter.

5. To permit the Licensee to take advantage of any standing order leasing price mentioned in such schedule, such standing order with any Licensed Manufacturer or

Importer shall be for one or more prints of each and every subject regularly produced, and offered for lease by such manufacturer or importer as a standing order subject and not advertised as special by such Licensed Manufacturer or Importer; and shall remain in force for not less than fourteen (14) consecutive days. Any standing order may be canceled or reduced by the Licensee on fourteen (14) days' notice. Extra prints in addition to a standing order shall be furnished to the Licensee at the standing order leasing price.

6. The Licensee shall not sell, rent, or otherwise dispose of, either directly or indirectly, any licensed motion pictures (however the same shall have been obtained) to any persons, firms or corporations or agents thereof, who may be engaged either directly or indirectly in selling or renting motion picture films.

7. The Licensee shall not make or cause to be made, or permit others to make, reproductions or so-called "duplicates" of any licensed motion pictures, nor sell, rent, loan, or otherwise dispose of or deal in any reproductions or "duplicates" of any motion pictures.

8. The Licensee shall not deliberately remove the trade-mark or trade name or title from any licensed motion picture, nor permit others to do so, but in case any title is made by the Licensee, the manufacturer's name is to be placed thereon, provided that in making any title by the Licensee the manufacturer's trade-mark shall not be reproduced.

9. The Licensee shall return to each licensed manufacturer or importer (without receiving any payment therefor, except that the said Licensed Manufacturer or Importer shall pay the transportation charges incident to the return of the same) on the first day of every month commencing seven months from the first day of the month on which this agreement is executed, an equivalent amount of positive motion-picture film in running feet (not purchased or leased over twelve months before) and of the make of the said Licensed Manufacturer or Importer, equal to the amount of licensed motion pictures that was so leased during the seventh month preceding the day of each such return, with the exception, however, that where

any such motion pictures are destroyed or lost in transportation or otherwise, and satisfactory proof is furnished within fourteen (14) days after such destruction or loss, to the Licensed Manufacturer or Importer from whom such motion picture was leased, the Licensed Manufacturer or Importer shall deduct the amount so destroyed or lost from the amount to be returned.

10. The Licensee shall not sell, rent, sublet, loan, or otherwise dispose of any licensed motion pictures (however the same may have been obtained) to any person, firm, or corporation in the exhibition business who may have violated any of the terms or conditions imposed by the Licensor through any of its licensees and of which violation the present Licensee may have had notice.

11. The Licensee shall not sublease licensed motion pictures to any exhibitor unless a contract with said exhibitor (satisfactory in form to the Licensor) is first exacted, under which the exhibitor agrees to conform to all the conditions and stipulations of the present agreement applicable to the exhibitor; and in the case of an exhibitor who may operate more than a single place of exhibition, a similar contract shall be exacted in connection with each place so operated, and supplied with licensed motion pictures by the Licensee.

12. After February 1, 1909, the Licensee shall not sublease any licensed motion pictures to any exhibitor unless each motion picture projecting machine on which the licensed motion pictures are to be used by such exhibitor is regularly licensed by the Motion Picture Patents Company, and the license fees therefor have been paid; and the Licensee shall, before supplying such exhibitor with licensed motion pictures, mail to the Motion Picture Patents Company, at its office in New York City, a notice, giving the name of the exhibitor, the name and location of the place of exhibition (and, if requested to do so by the Licensor, its seating capacity, hours of exhibition, and price of admission, and the number and make of the licensed projecting machine or machines), together with the date of the commencement of the subleasing, all in a form approved by the Licensor. The Licensee, when properly notified by the Licensor that the

license fees of any exhibitor for any projecting machine have not been paid, and that the license for such projecting machine is terminated, shall immediately cease to supply such exhibitor with licensed motion pictures.

13. The Licensee agrees to order during each month while this agreement is in force, for shipment directly to the place of business of the Licensee in the city for which this agreement is signed, licensed motion pictures, the net leasing price for which shall amount to at least \$2,500.

14. The Licensee shall, on each Monday during the continuance of this agreement, make or mail payment to each Licensed Manufacturer and Importer for all invoices for licensed motion pictures which have been received by the Licensee during the preceding week.

15. This agreement shall extend only to the place of business for the subleasing of motion pictures maintained by the Licensee in the city for which this agreement is signed, and the Licensee agrees not to establish or maintain a place of business for the subleasing of motion pictures, or from which motion pictures are delivered to exhibitors, in any other city, unless an agreement for such other city, similar to the present agreement, is first entered into by and between the Licensee and the Licensor.

16. The Licensor agrees that before licensing any person, firm, or corporation in the United States (not including its insular territorial possessions and Alaska) to lease licensed motion pictures from Licensed Manufacturers and Importers and to sublease such motion pictures it will exact from each such Licensee an agreement similar in terms to the present agreement, in order that all Licensees who may do business with the Licensed Manufacturers and Importers will be placed in a position of exact equality.

19. It is understood and specifically covenanted by the Licensee that the Licensor may terminate this agreement on fourteen (14) days' written notice to the Licensee of its intention so to do, and that if the Licensee shall fail to faithfully keep and perform the foregoing terms and conditions of lease, or any of them, or shall fail to pay the leasing

price for any motion pictures supplied by any Licensed Manufacturer or Importer when due and payable, according to the terms of this agreement, the Licensor shall have the right to place the Licensee's name on an appropriate suspended list, which the Licensor may publish and distribute to its other licensees and to exhibitors and to the Licensed Manufacturers and Importers and to direct the Licensed Manufacturers and Importers not to lease licensed motion pictures to the Licensee, and the exercise of either or both of these rights by the Licensor shall not be construed as a termination of this license, and the Licensor shall also have the right in such case, upon appropriate notice to the Licensee, to immediately terminate the present license, if the Licensor shall so elect, without prejudice to the Licensor's right to sue for and recover any damages which may have been suffered by such breach or noncompliance with the terms and conditions hereof by the Licensee, such breach or noncompliance constituting an infringement of said reissued letters patent. It is further agreed by the Licensee that if this agreement is terminated by the Licensor for any breach of any condition hereof, the right to possession of all licensed motion pictures shall revert, twenty days after notice of such termination, to the respective Licensed Manufacturers and Importers from whom they were obtained and shall be returned to such Licensed Manufacturers or Importers at once after the expiration of that period.

20. It is understood that the terms and conditions of this license may be changed at the option of the Licensor upon fourteen (14) days' written notice to the Licensee, but no such change shall be effective and binding unless duly ratified by an officer of the Licensor.

LEASING PRICES OF LICENSED POSITIVE MOTION PICTURES.

	Cents per running foot.
List.....	13
Standing order.....	11
Films leased between two and four months after release date.....	9
Films leased between four and six months after release date.....	7
Films leased over six months after release date.....	5

A rebate of 10 per cent will be allowed on all leases of licensed motion pictures, except at the 7-cent and 5-cent prices, which are net; said rebates to be due and payable between the 1st and 15th days of each of the months of March, May, July, September, November, and January on all films leased during the two months preceding each said period, provided all the terms and conditions of this license agreement have been faithfully observed.

TERMS.

All shipments are made f. o. b. lessor's office at lessee's risk.

All motion-picture films are to be shipped to lessee's office only.

The lengths at which motion-picture films are listed and leased are only approximate.

MOTION PICTURE PATENTS COMPANY,

By _____, *President*.

Licensee's signature, _____.

Place of business for which this license is granted:

Street and No. _____.

City _____, State _____.

Date _____.

EXHIBIT 5.

LICENSE AGREEMENT UNDER THE EXHIBITING MACHINE
PATENTS, BETWEEN MOTION PICTURE PATENTS COM-
PANY AND ARMAT MOVING PICTURE COMPANY.

(a) This agreement made this 7th day of January, 1909, by and between the Motion Picture Patents Company, a corporation organized and existing under the laws of the State of New Jersey, and having an office at Jersey City, in said State, party of the first part (hereinafter referred to as the "Licensor"), and Armat Moving Picture Company, a corporation organized and existing under the laws of the State of West Virginia, and having an office at Washington, D. C., party of the second part (hereinafter referred to as the "Licensee");

(b) Whereas the Licensor represents that it is the owner of the entire right, title, and interest in and to letters patent of the United States:

No. 578185, dated March 2, 1897, for vitascope, granted to Thomas Armat;

No. 580749, dated April 13, 1897, for vitascope, granted to Thomas Armat;

No. 586953, dated July 20, 1897, for phantoscope, granted to Charles F. Jenkins and Thomas Armat;

No. 588916, dated August 24, 1897, for kinetoscope, granted to Charles M. Campbell as the assignee of Willard G. Steward and Ellis F. Frost;

No. 673329, dated April 30, 1901, for kinetoscope, granted to the American Vitagraph Company as the assignee of Albert E. Smith;

No. 673992, dated May 14, 1901, for vitascope, granted to Thomas Armat;

No. 707934, dated August 26, 1902, for projecting kinetoscope, granted to E. & H. T. Anthony & Co., as assignees of Woodville Latham;

No. 722382, dated March 10, 1903, for animated picture apparatus, granted to American Mutoscope & Biograph Company as the assignee of John A. Pross;

No. 744251, dated November 17, 1903, for kinetoscope, granted to Albert E. Smith;

No. 770937, dated September 27, 1904, for kinetoscope, granted the Vitagraph Company of America as the assignee of Albert E. Smith;

No. 771280, dated October 4, 1904, for winding reel, granted Albert E. Smith;

No. 785205, dated March 21, 1905, for flame-shield for kinetoscopes, granted the Vitagraph Company of America as the assignee of William Ellwood; and

No. 785237, dated March 21, 1905, for film-holder for kinetoscopes, granted the Vitagraph Company of America as the assignee of Albert E. Smith;

all of which said letters patent relate to improvements on the motion-picture art, and that there are no outstanding licenses, shop rights, or other rights under said letters patent, or either of them, except a license for parlor kinetoscopes, granted the Karmata Company, of Washington, D. C., under Letters Patent Nos. 578185, 580749, 586953, and 673992, and certain alleged licenses under U. S. Letters Patent No. 586953, which are in dispute, claimed to be owned by the Edison Company and the American Graphophone Company, of Washington, D. C., and S. Lubin, of Philadelphia, Pennsylvania; and excepting a license granted by the American Mutoscope & Biograph Company to the firm of Marvin and Casler to manufacture and sell cameras and exhibiting or projecting machines under letters patent owned by it (some of which are hereinbefore referred to) for use in foreign countries only and excepting certain licenses granted by the Licensee to the American Mutoscope & Biograph Company under Letters Patent Nos. 578185, 580749, 586953, 588916, and 673992, and by the American Mutoscope & Biograph Company to the Licensee under patents Nos. 707934 and 722382, which licenses are, however, by agreement between said parties, suspended and are not to

be acted upon until the Licensor becomes bankrupt, ceases doing business or shall be dissolved voluntarily or otherwise, or its charter shall be repealed; and

(c) Whereas the Licensor represents further that it is the owner of the entire right, title, and interest in and to reissued Letters Patent of the United States Numbered 12192, dated January 12, 1904, the original letters patent of which were numbered 589168, and dated August 31, 1897, and that it has granted licenses under the said reissued letters patent only to the following-named persons, firms, or corporations:

American Mutoscope & Biograph Company of New York City;

Edison Manufacturing Company of Orange, N. J.;

Essanay Company of Chicago, Illinois;

Kalem Company of New York City;

George Kleine of Chicago, Illinois;

Lubin Manufacturing Company of Philadelphia, Pa.;

Pathe Freres of New York City;

Selig Polyscope Company of Chicago, Illinois;

The Vitagraph Company of America of New York City;

and that all of the said persons, firms, or corporations have covenanted and agreed to lease only and not sell in the United States, its Territories and possessions except its insular possessions and Alaska (hereinafter referred to as the "lease territory aforesaid"), motion picture films manufactured or imported by them, of a width greater than approximately one inch (1"), and under the condition and restriction that the said films shall be used only on exhibition or projecting machines licensed by the Licensor under United States letters patent owned by the Licensor; and

(d) Whereas the Licensee is engaged in the manufacture and sale of motion picture exhibiting and projecting machines, and relying upon the representation of the Licensor and induced thereby, desires to obtain from the Licensor a license under the said United States Letters Patent;

(e) Now, therefore, the parties hereto, for and in consideration of the sum of one dollar to each in hand paid by

the other, and for other good and valuable considerations, from each to the other moving, receipt of all of which is hereby acknowledged, have agreed as follows:

(1) The Licensor hereby grants to the Licensee for the term and subject to the covenants, conditions, and stipulations hereinafter expressed, the right and license for the United States, its territories and possessions, to manufacture and sell, motion picture exhibiting or projecting machines embodying one or more of the inventions described and claimed in the said United States Letters Patent Nos. 578185, 580749, 586953, 588916, 673329, 673992, 707934, 722382, 744251, 770937, 771280, 785205, and 785237. The license hereby granted is personal to the Licensee, and in the event of the permanent discontinuance or retirement from business of the Licensee for a period of six consecutive months, the license hereby granted shall be immediately terminated.

(2) The Licensor, for itself, its successors, assigns, and legal representatives, hereby releases, acquits, and discharges the Licensee from any and all claims, demands, and liability for profits and damages because of any infringement by the Licensee of one or more of the said United States Letters Patent Nos. 578185, 580749, 586953, 588916, 673329, 673992, 707934, 722382, 744251, 770937, 771280, 785205, and 785237, or use by the Licensee of the inventions covered thereby.

(3) The Licensee hereby recognizes and admits the validity of each and all of the said United States Letters Patent Nos. 578185, 580749, 586953, 588916, 673329, 673992, 707934, 722382, 744251, 770937, 771280, 785205, and 785237, and the Licensee agrees not to contest or question the same during the continuance of this agreement.

(4) The Licensee covenants and agrees that on all motion picture exhibiting or projecting machines containing one or more of the inventions described and claimed in the said United States Letters Patent Nos. 673329, 744251, 770937, 771280, 785205, and 785237, made in the United States, its Territories and possessions, by the Licensee, and sold after the license hereby granted shall take effect and during the

continuance of this agreement, the Licensee will pay royalties as follows:

On each such machine capable of exhibiting or projecting by transmitted light, motion pictures on film of a width greater than approximately one inch (1"), a royalty of one dollar (\$1).

On each such machine not capable of exhibiting or projecting by transmitted light, motion pictures on film of a width greater than approximately one inch (1"), a royalty of three-fifths (3-5) of one (1) per cent of the net retail selling price of such machines.

On each such machine capable of exhibiting or projecting by reflected light motion pictures on film of any width, but but not capable of exhibiting or projecting the same by transmitted light, a royalty of three-fifths ($\frac{3}{5}$) of one (1) per cent of the net retail selling price of such machine.

It is understood and agreed by and between the Licensor and the Licensee that the expression "motion picture exhibiting or projecting machine," as used hereinbefore or hereinafter, includes motion-picture mechanisms or "heads" for such exhibiting or projecting machines, but not any repair parts or portions of such motion-picture mechanisms or "heads."

The Licensee further covenants and agrees that the Licensee will, within fifteen (15) days after the last days of the months of November, February, May, and August in each year, after this agreement takes effect and during its continuance, submit a statement in writing signed by the proper officer of the Licensee, and sworn to if requested by the Licensor, showing the number of exhibiting or projecting machines of each of the classes provided for in this paragraph, embodying one or more of the inventions described and claimed in the said United States Letters Patent Nos. 673329, 744251, 770937, 771280, 785205, and 785237, sold by the Licensee during the three months ending with the last days of the said months, and at the same time pay the royalties due thereon. The first such statement and payment, however, shall be only for the period between February 1, 1909, and February 28, 1909. The Licensee further agrees

to keep accurate books of account and to permit the Licensor to determine through Messrs. Price, Waterhouse & Company, or any other reputable chartered accountants to be agreed upon by the parties hereto, the number of such exhibiting or projecting machines sold by the Licensee while this agreement is in effect, if the Licensor should so desire.

(5) The Licensee further covenants and agrees that each and every motion picture exhibiting or projecting machine capable of exhibiting or projecting by transmitted light, motion pictures on a film of a width greater than approximately one inch (1''), and embodying one or more of the inventions described and claimed in the said United States Letters Patent Nos. 578185, 580749, 586953, 588916, 673329, 673992, 707934, 722382, 744251, 770937, 771280, 785205, and 785237 made in the United States, its territories or possessions by the Licensee, shall be sold by the Licensee, except when sold for export, under the restriction and condition that such exhibiting or projecting machines, shall be used solely for exhibiting or projecting motion pictures containing the invention of reissued Letters Patent No. 12192, leased by a Licensee of the Licensor while it owns said patents, and upon other terms to be fixed by the Licensor and complied with by the user while the said machine is in use and while the Licensor owns said patents (which other terms shall only be the payment of a royalty or rental to the Licensor while in use). The Licensor further covenants and agrees that the Licensee will attach in a conspicuous place to each and every such exhibiting or projecting machine of the Licensee's manufacture, sold by the Licensee, except for export, after the date hereof, a plate showing plainly not only the dates of the letters patent under which the said machine is licensed, but also the following words and figures:

Serial No:

Patented.

No.

The sale and purchase of this machine gives only the right to use it solely with moving pictures containing the invention of reissued patent No. 12192, leased by a licensee

of the Motion Picture Patents Company, the owner of the above patents and reissued patent, while it owns said patents, and upon other terms to be fixed by the Motion Picture Patents Company and complied with by the user while it is in use and while the Motion Picture Patents Company owns said patents. The removal or defacement of this plate terminates the right to use this machine.

(6) The Licensee further covenants and agrees that each and every motion picture exhibiting or projecting machine not capable of exhibiting or projecting by transmitted light, motion pictures on a film of a width greater than approximately one inch (1''), or capable of exhibiting or projecting motion pictures on film of any width, but only with reflected light, and embodying one or more of the inventions described and claimed in the said Letters Patent Nos. 578185, 580749, 586953, 588916, 673329, 673992, 707934, 722382, 744251, 770937, 771280, 785205, and 785237; and made in the United States, its Territories and possessions by the Licensee, shall be sold by the Licensee, except when sold for export, under the restrictions and condition that the said exhibiting or projecting machine shall be used in exhibiting or projecting motion pictures only in places to which no admission fee is charged. The Licensee further covenants and agrees that the Licensee will attach in a conspicuous place to each and every such exhibiting or projecting machine of the Licensee's manufacture, sold by the Licensee, except for export, after the date hereof, a plate showing plainly not only the dates of the Letters Patent under which the said machine is licensed, but also the following words and figures:

Patented

No.

The sale and purchase of this machine gives only the right to use it so long as this plate is not removed or defaced and in places to which no admission fee is charged.

(7) The Licensee further covenants and agrees that to each and every motion-picture exhibiting or projecting machine of any kind, embodying one or more of the inventions described and claimed in the said United States Letters

Patent Nos. 578185, 580749, 586953, 588916, 673329, 673992, 707934, 722382, 744251, 770937, 771280, 785205, and 785237, and made in the United States, its Territories and possessions by the Licensee, when sold bona fide for export, there shall be attached a plate showing plainly not only the dates of the letters patent under which the said machine is licensed, but also the following words and figures:

Patented

No.

Not licensed for use in the United States, its Territories and possessions (except its insular possessions and Alaska).

It is understood by and between the parties hereto that by "export sales" is meant all sales for delivery outside of the "lease territory aforesaid," when the machine, addressed to the purchaser, agent, or consignee, is delivered to the vessel or to a transportation company for transportation outside of the said "lease territory aforesaid," and not otherwise.

(8) The Licensee further covenants and agrees that the Licensee will not, during the continuance of this agreement, make or sell repair parts for motion-picture exhibiting or projecting machines which have been manufactured or imported and sold by any other person, firm, or corporation, who or which is licensed by the Licensor to manufacture or import and sell motion-picture exhibiting or projecting machines under any or all of the said United States Letters Patent Nos. 578185, 580749, 586953, 588916, 673329, 673992, 707934, 722382, 744251, 770937, 771280, 785205, and 785237, when such repair parts constitute any part of any invention described and claimed in the said United States letters patent.

(9) The Licensee further covenants and agrees that the Licensee will not sell any exhibiting or projecting machine which the Licensee is hereby licensed to manufacture at less than the Licensee's list price for such machine, except to jobbers, and to other persons, firms, and corporations for the purpose of resale, and that the Licensee will require such jobbers and other persons, firms, and corporations to sell

such machines at not less than the Licensee's list price for such machine. Nothing in this paragraph shall prohibit, however, the allowance of two per cent (2%) discount from list price for ten days cash payments.

(10) The Licensee further covenants and agrees that the Licensee will not sell, after May 1, 1909, during the continuance of this agreement, any exhibiting or projecting machine which the Licensee is hereby licensed to manufacture, capable of exhibiting or projecting by transmitted light, motion pictures on film of a width greater than approximately one inch (1"), at a less list price than one hundred and fifty dollars (\$150), which list price may include the machine head, stereopticon attachment, film magazine, lamp house, arc lamp, rheostat, switch and switch box, and attaching cords, except, however, that for the last five named items may be substituted a gas burner and gas making outfit. It is further understood and agreed that such complete machines may be sold between February 1, 1909, and May 1, 1909, at a less list price than one hundred and fifty dollars (\$150), but only to persons, firms, or corporations not engaged in the business of renting motion picture films, and not for use in any permanent or fixed place of exhibition.

(11) It is further mutually covenanted and agreed by and between the Licensor and Licensee that the Licensor may grant other licenses to manufacture or import and sell motion picture exhibiting or projecting machines under any or all of the said United States Letters Patent Nos. 578185, 580749, 586953, 588916, 673329, 673992, 707954, 722382, 744251, 770937, 771280, 785205, and 785237, said licenses to be in writing, and not to be granted or continued under terms, conditions, or stipulations which are in any respect more favorable to the Licensees named therein than those set forth in this agreement (except to the American Mutoscope & Biograph Company of New York City, which is to pay no royalties on any exhibiting or projecting machines embodying any or all of the inventions described and claimed in the aforesaid Letters Patent Nos. 578185, 580749, 586953, 588916, 673992, 707934, and 722382, and to the Edison

Manufacturing Company, of Orange, New Jersey, and the firm of Marvin and Casler, of Canastota, New York, neither of which is to pay any royalties on any exhibiting or projecting machines embodying any or all of the inventions described and claimed in the aforesaid Letters Patent Nos. 578185, 580749, 586953, 588916, 673992, 707934, and 722382, when such exhibiting or projecting machines are sold bona fide for export, the covenants and conditions in the licenses to each and all of the said firms or corporations to be otherwise like those set forth in this agreement).

(12) It is mutually covenanted and agreed by and between the Licensors and Licensees that, unless sooner terminated, as hereinbefore and hereinafter provided, this agreement, and the license granted thereby, shall take effect on February 1, 1909, and shall continue until June 20, 1910, but that the Licensee may renew this agreement and license thereafter from year to year upon the same terms, conditions, and stipulations as herein provided, by giving notice to the Licensors on or before the 20th day of March in each year, beginning with the year 1910, of the Licensee's election to so renew this agreement and license, and upon the giving of each such notice this agreement and the license thereby granted shall be considered and treated by the Licensors and Licensees as renewed for the period of one year, beginning June 20th of the year following such notice, and such notice and renewal may be given and made by the Licensee during the life or lives of each or all of the patents under which the Licensee is hereby licensed.

In case, however, that the Licensors should become bankrupt, cease doing business, or should be dissolved, voluntarily or otherwise, or its charter should be repealed, then, on the happening of either of such events, this agreement and the agreements made with the additional Licensees hereinbefore provided for, that are then in force, shall forthwith terminate and be at an end.

(13) It is further mutually covenanted and agreed by and between the Licensors and Licensees, that if, during said original term or during any such renewal period, either

party should, knowingly or through gross neglect or carelessness, be guilty of a breach, violation, or nonperformance of its covenants, conditions, and stipulations resulting in substantial injury to the other party, and should, for the period of forty (40) days after notice thereof from the other party persist therein or fail to correct, repair, or remedy the same, then and in such case the party aggrieved may terminate this agreement by giving notice in writing to the guilty party of its intention so to do. It is, however, mutually covenanted and agreed by and between the Licensor and Licensee that if the guilty party should correct, repair, or remedy such breach, violation, or nonperformance of its covenants, conditions, and stipulations within the said period of forty (40) days after such notice, and should thereafter knowingly or through gross neglect or carelessness be guilty of a second breach, violation, or nonperformance of its covenants, conditions, and stipulations, resulting in substantial injury to the other party, then and in such case, the party aggrieved may terminate this agreement by giving thirty (30) days' notice in writing to the guilty party of its intention so to do. Such termination of the agreement, however, shall not prejudice either party hereto in the recovery of damage because of any such breach, violation, or nonperformance by the other party hereto.

(14) All notices provided for in this agreement, shall be in writing and shall be given by delivering the same to the Licensor or Licensee, as the case may be, or by depositing such notices, postage prepaid, in any post office of the United States, in a sealed envelope directed to the Licensor or Licensee, as the case may be, at its last known post-office address, to be forwarded by registered mail.

(15) It is mutually covenanted and agreed by and between the Licensor and Licensee that after notice of the termination of this agreement and the license granted thereby by either party, as provided for in paragraph 13 of this agreement, and after the same have been terminated, no matter what the cause or manner of termination may be, neither this license agreement, nor the fact that the Licensee has entered into

or acted under it, shall be used in any manner, directly or indirectly, by or for the Licensor, its successors, assigns or legal representatives or by or for others with its or their consent or permission, against the Licensee, or the Licensee's successors or legal representatives, in any litigation, controversy or proceeding involving the Licensee, or them or any other persons, firms or corporations, or in any other way, it being understood and agreed that upon such termination the positions and rights of the Licensor and Licensee shall be the same as if this agreement had not been made; *provided, however*, that the rights of neither party shall be prejudiced by such termination in the recovery of damages for any breach or other violation of this agreement by the other occurring prior to such termination.

In witness whereof, the parties hereto have caused this agreement to be executed by their officers duly authorized to perform those acts, the day and year first above written.

MOTION PICTURE PATENTS COMPANY,
By FRANK L. DYER, *President*.
ARMAT MOVING PICTURE COMPANY,
By THOS. ARMAT, *President*.

Attest:

GEORGE F. SCULL, *Secretary*.

Attest:

LOUIS H. STABLER, *Secretary*.

EXHIBIT 6.

CHARTER OF GENERAL FILM COMPANY, APRIL 18, 1910.

STATE OF MAINE:

Certificate of organization of a corporation under the general law.

The undersigned, officers of a corporation organized at Portland, Maine, at a meeting of the signers of the articles of agreement therefor, duly called and held at No. 95 Exchange Street, in the city of Portland, State of Maine, on Monday, the eighteenth day of April, A. D. 1910, hereby certify as follows:

The name of said corporation is General Film Company.

The purposes of said corporation are—

For the purpose of buying, selling, or otherwise acquiring or disposing of letters patent and licenses under letters patent for inventions pertaining to the production and use of photographic or other negatives and photographic or other positives, of objects at rest and objects in motion; manufacturing, buying, using, selling, or otherwise acquiring or disposing of, or leasing, apparatus, materials, processes, and rights, pertaining to the production and use of photographic or other negatives and photographic or other positives, of objects at rest and objects in motion; manufacturing, buying, using, selling, or otherwise acquiring or disposing of, or leasing, photographic or other negatives and photographic or other positives of objects at rest and objects in motion; manufacturing, buying, using, selling, or otherwise acquiring or disposing of, or leasing, apparatus and materials of every character used in exhibitions, entertainments, motion-picture shows and theatrical performances, and in equipping theaters, halls, and similar

places of amusement, entertainment, and instructions; purchasing and holding such real and personal property necessary for or incidental to the purposes of this company, or any of them; mortgaging, leasing, selling, or disposing of by agreement or otherwise, and conveying, any and all of the real or personal property of the corporation; buying or otherwise acquiring and holding, selling, or otherwise disposing of, the stocks, bonds, notes, and other evidences of indebtedness of any domestic or foreign corporation, and issuing and delivering its stock, bonds, or other obligations in payment or exchange for stock, bonds, and other obligations of other corporations organized for purposes similar to the purposes of this corporation or conducting a business similar to that herein provided for or capable of being conveniently carried on in connection with the business above described; conducting its business in all its branches, and having one or more offices; holding, leasing, or conveying real or personal property in all States and in all foreign countries to which the business of the company may be extended, and borrowing money and doing any acts to protect and improve the business of the corporation and enhance the value of its property.

To issue any and all bonds necessary to the business of the corporation, and to secure the same by mortgage, deed of trust, or any other form of conveyance; to issue as preferred stock such part of its capital stock as shall be fixed and determined in the by-laws; to acquire and undertake the whole or any part of the business, property, assets, and liabilities of any person, firm, or corporation engaged in a business similar to that herein provided for, or capable of being conveniently carried on in connection with the business above described; to do all or any part of the above things as principals, agents, contractors, or otherwise, and by or through agents, or otherwise, and either alone or in conjunction with others; and to do any and all things incidental to the prosecution of the purposes herein contained, or any of them, and not inconsistent with the laws of the State of Maine.

The amount of capital stock is two million (\$2,000,000) dollars.

The amount of preferred stock is one million five hundred thousand (\$1,500,000) dollars.

The amount of common stock is five hundred thousand (\$500,000) dollars.

The amount of capital stock already paid in is eleven thousand four hundred (\$11,400) dollars.

The par value of the shares is one hundred (\$100) dollars each.

The names and residences of the owners of said shares are as follows:

Names.	Residences.	Preferred.	Common.
Frank L. Dyer.....	Montclair, N. J.....	1	.....
J. A. Berst.....	New York City.....	1	.....
Gaston Melies.....	New York City.....	1	.....
William M. Selig.....	Chicago, Ill.....	1	.....
Samuel Long.....	Hoboken, N. J.....	1	.....
Siegmund Lubin.....	Philadelphia, Pa.....	1	.....
J. J. Kennedy.....	New York City.....	1	.....
William T. Rock.....	New York City.....	1	.....
George Kleine.....	Chicago, Ill.....	1	5
George K. Spoor.....	Chicago, Ill.....	.....	.....
Biograph Company.....	Hoboken, N. J.....	1	100
		9	105

leaving in the treasury, unsubscribed for 19,886 shares, of which 14,991 are preferred and 4,895 are common.

Said corporation is located at Portland, in the county of Cumberland.

The number of directors is ten and their names are Frank L. Dyer, J. A. Berst, Gaston Melies, William M. Selig, Siegmund Lubin, Samuel Long, J. J. Kennedy, William T. Rock, George Kleine, and George K. Spoor.

The name of the clerk is L. L. Hight and his residence is Portland, Maine.

The undersigned, J. J. Kennedy, is president; the undersigned, J. A. Berst, is treasurer, and the undersigned, J. J. Kennedy, J. A. Berst, George Kleine, Samuel Long, Siegmund Lubin, W. M. Selig, Gaston Melies, and William T. Rock are a majority of the directors of said corporation.

Witness our hands this eighteenth day of April, A. D. 1910.

J. J. KENNEDY,
President.

J. A. BERST,
Treasurer.

J. J. KENNEDY,
J. A. BERST,
GEORGE KLEINE,
SAMUEL LONG,
SIEGMUND LUBIN,
W. M. SELIG,
GASTON MELIES,
WM. T. ROCK,
Directors.

STATE OF MAINE,
Cumberland, ss:

PORTLAND, MAINE, *April 15, 1910.*

Then personally appeared J. J. Kennedy, J. A. Berst, George Kleine, Samuel Long, Siegmund Lubin, Wm. M. Selig, Gaston Melies, and William T. Rock, and severally made oath to the foregoing certificate, that the same is true.

Before me,

HARRY P. SWEETSER,
Justice of the Peace.

STATE OF MAINE,
ATTORNEY GENERAL'S OFFICE,
April 20, 1910.

I hereby certify that I have examined the foregoing certificate, and the same is properly drawn and signed, and is conformable to the constitution and laws of the State.

CHARLES P. BARNES,
Asst. Attorney General.

(Endorsed:) Copy. (Name of corporation) General Film Company. Cumberland, SS. Registry of Deeds. Received April 21, 1910, at 10 h. 5 m. a. m. Recorded in vol. 42, page 69. Attest: Frank L. Clark, Register. A true copy of record. Attest: Frank L. Clark, Register. State of Maine. Office of Secretary of State. Augusta, April 21, 1910. Received and filed this day. Attest: A. I. Brown, Secretary of State. Recorded in vol. 73, page 309.

EXHIBIT 7.

AGREEMENT BETWEEN MOTION PICTURE PATENTS COMPANY AND GENERAL FILM COMPANY, APRIL 21, 1910.

1. This agreement, made this 21st day of April, 1910, by and between the Motion Picture Patents Company, a corporation organized and existing under the laws of the State of New Jersey, and having an office in the city, county, and State of New York, party of the first part (hereinafter referred to as the Licensor), and the General Film Company, a corporation organized and existing under the laws of the State of Maine, and having an office in said city of New York, party of the second part (hereinafter referred to as the Licensee), witnesseth that:

2. Whereas the Licensor represents that it is organized to own, deal in, and grant licenses under letters patent pertaining to the motion-picture art, and that it is the owner of all the right, title, and interest in and to the following United States Letters Patent relating to that art—

No. 578185, dated March 2, 1897, for vitascope, granted to Thomas Armat.

No. 580749, dated April 13, 1897, for vitascope, granted to Thomas Armat.

No. 586953, dated July 20, 1897, for phantoscope, granted to Charles F. Jenkins and Thomas Armat.

No. 588916, dated August 24, 1897, for kinetoscope, granted to Charles M. Campbell, as the assignee of Willard G. Steward and Ellis F. Frost.

No. 629063, dated July 18, 1899, for kinetoscopic camera, granted to American Mutoscope Company as the assignee of Herman Casler.

No. 673329, dated April 30, 1901, for kinetoscope, granted to The American Vitagraph Company as the assignee of Albert E. Smith.

No. 673992, dated May 14, 1901, for vitascope, granted to Thomas Armat.

No. 707934, dated August 26, 1902, for projecting kinoscope, granted E. & H. T. Anthony & Co., as assignees of Woodville Latham.

No. 722382, dated March 10, 1903, for animated-picture apparatus, granted to American Mutoscope and Biograph Company as the assignee of John A. Pross;

No. 744251, dated November 17, 1903, for kinoscope, granted Albert E. Smith;

No. 770937, dated September 27, 1904, for kinoscope, granted the Vitagraph Company of America as the assignee of Albert E. Smith;

No. 771280, dated October 4, 1904, for winding reel, granted Albert E. Smith;

No. 785205, dated March 21, 1905, for flame-shield for kinoscopes, granted the Vitagraph Company of America as the assignee of William Ellwood; and

No. 785237, dated March 21, 1905, for film-holder for kinoscopes, granted the Vitagraph Company of America as the assignee of Albert E. Smith; and

3. Whereas, the Licensor is the owner of all the right, title, and interest in and to reissued letters patent of the United States numbered 12,192, dated January 12th, 1904, the original letters patent whereof are numbered 589168 and dated August 31, 1897, under which reissued letters patent licenses have been granted to the Edison Manufacturing Company of Orange, New Jersey; Pathe Freres, of New York, New York; the Kalem Company (Inc.), of New York, New York; the Essanay Film Manufacturing Company of Chicago, Illinois; the Lubin Manufacturing Company of Philadelphia, Pennsylvania; Gaston Melies, of New York, New York (for himself and as attorney in fact for George Melies of Paris, France); the Selig Polyscope Company of said Chicago; the Vitagraph Company of America, of New York, New York; George Kleine of said Chicago, and the Biograph Company, of New York, New York (which licensees are, with their successors as such, hereinafter referred to as "Patents Company Licensees"); and

4. Whereas, the Licensee desires to obtain from the Licensor a license under said reissued Letters Patent 12192, and to lease positive motion pictures in certain territory, for use in exhibiting or projecting machines containing the inventions, or any of them, described and claimed in said Letters Patent Nos. 578185, 580749, 586953, 588916, 673329, 673992, 707934, 722382, 744251, 770937, 771280, 785205, and 785237, and to sell positive motion pictures in certain other territory;

5. Now, therefore, the parties hereto, for and in consideration of the sum of one dollar to each paid by the other, and for other good and valuable considerations from each to the other moving, receipt of all of which is hereby acknowledged, have agreed as follows:

6. The Licensor hereby grants to the Licensee, for the term and subject to the covenants, conditions, and stipulations hereinafter expressed, the right and license for the United States, its territories, dependencies, and possessions (hereinafter called the "territory aforesaid") to have positive motion pictures manufactured for it by "Patents Company Licensees," and which motion pictures it shall own, on film of a greater width than approximately one inch, embodying the inventions of said reissued Letters Patent No. 12192, from negative motion pictures made in foreign countries and which are procured by it from others than "Patents Company Licensees," and to purchase positive motion pictures manufactured in foreign countries, and to lease said positive motion pictures, so manufactured for and purchased by it, in the United States, its territories, dependencies, and possessions (with the exceptions of its insular possessions and Alaska), hereinafter referred to as the "lease territory aforesaid," to motion picture exhibitors upon condition that they be used solely in exhibiting or projecting machines containing the inventions or some of them of said Letters Patent Nos. 578185, 580749, 586953, 588916, 673329, 673992, 707934, 722382, 744251, 770937, 771280, 785205, and 785237, and licensed by the Licensor and to sell said positive motion pictures so manufactured for and

purchased by it, in or for said insular possessions and Alaska and foreign countries, hereinafter referred to as "said export territory" or "for export"; it being understood and agreed by the Licensor and Licensee that the latter in the leasing of a positive motion picture shall not be limited to a single lease thereof to one motion picture exhibitor, but that it may, subject to the provisions of section 5 of paragraph hereof numbered 14, lease the same as often and to as many different motion picture exhibitors as it may desire.

The License hereby granted is personal to the Licensee and, in the event of the permanent discontinuance or retirement from business of the Licensee for a period of six consecutive months, the license hereby granted shall be immediately terminated.

7. The Licensee hereby recognizes and admits the validity of said reissued Letters Patent No. 12192 and Letters Patent Nos. 578185, 580749, 586953, 588916, 673329, 673992, 707934, 722382, 744251, 770937, 771280, 785205, and 785237 and agrees not to contest or question the same during the continuance of this agreement.

8. The Licensee covenants and agrees that all positive motion pictures manufactured for it, in the "territory aforesaid," during the continuance of this agreement, will be so manufactured for it only by "Patents Company Licensees"; that in the manufacture of such positive motion pictures in the "territory aforesaid," it will have used only negative motion pictures made in foreign countries and procured by it from others than "Patents Company Licensees"; and that it will not, in the "territory aforesaid," purchase or otherwise acquire or lease or sell or otherwise dispose of or deal in positive motion pictures except those manufactured for and purchased by it as aforesaid, without the consent in writing of the Licensor, nor sell or otherwise dispose of any negative motion pictures.

9. The Licensee covenants and agrees that it will, after the license hereby granted takes effect, pay royalty to the Licensor between the first and fifteenth days of each month on all negative motion pictures procured and positive

motion pictures purchased by it as aforesaid during the preceding month, at the maximum rate of one-half ($\frac{1}{2}$) cent per running foot hereinafter provided for; that it will keep accurate books of account and submit statements at the time of making such payments (sworn to, if required by the Licensor) giving the total number of running feet of such motion pictures, classified according to subjects, which the Licensee has so procured and purchased during the preceding month; that the Licensor shall have the right to inspect its books of account, through any reputable chartered accountants, to determine the amount of such motion pictures which it shall have so procured and purchased after the license hereby granted takes effect; and that any failure to pay the said royalties when due and payable, or any making of a false return by the Licensee of the amount of such motion pictures so procured and purchased by it, shall make the license hereby granted terminable by the Licensor.

10. The Licensor further covenants and agrees that the royalties which it will charge to the Licensee for negative motion pictures procured and positive motion pictures purchased by the Licensee as aforesaid shall not, during the year preceding June 20, 1910, and during any year thereafter during the continuance of this agreement, as hereinafter provided, exceed the following rates—that is to say:

If the amount of such motion pictures for any such year be four million running feet or less, a royalty of one-half ($\frac{1}{2}$) cent per running foot on the total number of running feet for that year; if the amount thereof for any such year exceed four million running feet but do not exceed six million running feet, a royalty of four and one-half ($4\frac{1}{2}$) mills per running foot on the total number of running feet for that year; if the amount thereof for any such year exceed six million running feet but do not exceed eight million running feet, a royalty of four (4) mills per running foot on the total number of running feet for that year; if the amount thereof for any such year exceed eight million running feet but do not exceed ten million running feet, a royalty of three and three-quarters ($3\frac{3}{4}$) mills per running foot on the total num-

ber of running feet for that year; and if the amount thereof for any such year exceed ten million running feet, a royalty of three and one-quarter ($3\frac{1}{4}$) mills per running foot on the total number of running feet for that year.

The Licensor further covenants and agrees that it will, within thirty (30) days after June 20 of each year, repay to the Licensee any excess of royalties which may have been paid by the Licensee during the year by reason of the difference between the rate of one-half ($\frac{1}{2}$) cent per running foot which the Licensee shall have paid and the rate, based on the total amount of such motion pictures procured and purchased by it for the year, which the Licensee should have paid according to the foregoing schedule, the royalty rate to be charged for the period between the date hereof and June 20, 1910, to be that which would have been charged if the procuring and purchasing of such motion pictures by the Licensee had been continued for a year at the same rate at which they were so procured and purchased for such period.

The Licensor and Licensee further mutually covenant and agree that no royalty other than or in addition to that provided for in this paragraph shall be charged to or collected from the Licensee by the Licensor up to June 20, 1911, or during any renewal of this agreement up to August 31, 1914, the date of the expiration of said reissued Letters Patent No. 12192, and no royalty whatever shall be charged to or collected from the Licensee by the Licensor after either of the claims of said reissued Letters Patent No. 12192 and either of the claims of reissued Letters Patent No. 12037, dated September 30, 1902 (owned by the Licensor and under which all of the Patents Company Licensees, with the exception of George Kleine, have been licensed), in any suit for infringement thereof, is held invalid by a court that last hears and decides such suit, or after August 31, 1914, during any renewal of this agreement.

11. The Licensee further covenants and agrees not to sell or otherwise dispose of or offer for sale, in the "territory aforesaid," unexposed positive or negative motion picture films during the continuance of this agreement; but this

provision shall not prevent the Licensee from selling, as refuse, in the "territory aforesaid," second-hand positive or negative motion pictures which have been used or become shopworn or in any way damaged, to a manufacturer or manufacturers licensed by the Licensor to manufacture sensitized motion picture film for "Patents Company Licensees," or to a manufacturer to manufacture other articles than film therefrom, but only after they have been rendered by the Licensee unsuitable for use as motion pictures by cutting or otherwise defacing them; nor from selling exposed positive or negative film (either waste or in rolls) known as "blank film" for use by exhibitors for leaders or for spacing or for similar purposes, but which shall not and can not be otherwise employed for the exhibition of motion pictures.

12. The Licensee further covenants and agrees not to lease, loan, rent out, sell, or offer for sale, or otherwise dispose of in the "territory aforesaid," motion pictures to anyone purchasing or otherwise obtaining, leasing, using, loaning, renting out, selling, offering for sale, or otherwise disposing of or dealing in motion pictures containing the invention of said reissued Letters Patent No. 12192, not the output of the Licensee or of other licensees of the Licensor under said Letters Patent.

13. It is further mutually covenanted and agreed by the Licensor and Licensee that the Licensee shall have the right to sell motion pictures, manufactured for or purchased by it as aforesaid, in or for "said export territory," when the goods, addressed to the purchaser, agent, or consignee, are delivered to the vessel or to a transportation company for transportation to "said export territory," and not otherwise; but in no case shall sales "for export" of motion pictures be knowingly made by the Licensee to persons, firms, or corporations whom such Licensee has reason to believe will reimport them into the "lease territory aforesaid" for sale or use.

14. It is further mutually covenanted and agreed by and between the Licensor and Licensee that no lease of positive motion pictures manufactured for or purchased by the

Licensee, as aforesaid, shall be made in the "lease territory aforesaid" by the Licensee, except upon and subject to the following terms and conditions, namely: (1) That the lessee of such positive motion picture shall not sell or otherwise dispose of the same, but shall only have the right to use such positive motion picture in giving motion-picture exhibitions in machines licensed by the Licensor under the said Letters Patent Nos. 578185, 580749, 586953, 588916, 673329, 673992, 707934, 722382, 744251, 770937, 771280, 785205, and 785237, or one or more of them, or under any other letters patent that it may hereafter acquire or control; and (2) that the lessee shall not make or permit others to make any reproduction commonly known as a "dupe" of such positive motion picture or any other positive motion picture containing the invention of said reissued Letters Patent No. 12192; and (3) that the lessee shall not sublet such motion picture; and (4) that the lessee of such positive motion picture shall not remove the trade-mark or trade name or title therefrom; and (5) that the Licensee shall on the first day of every month, beginning with December 1, 1910, withdraw from the market an amount of such positive motion pictures (not leased by the Licensee over twelve months before) equal to the amount of such positive motion pictures that was so leased by it during the seventh month preceding the date of each such withdrawal, with the exception, however, that where any such positive motion pictures are destroyed by fire or lost in transportation the amount so destroyed or lost shall be deducted from the amount to be withdrawn as aforesaid; and (6) that the violation of any of the foregoing conditions entitles the lessor to immediate possession of such motion picture without liability for any price which the lessee or the person in whose possession it is found may have paid therefor.

15. The Licensee covenants and agrees that in the "lease territory aforesaid" the Licensee will dispose of the positive motion pictures manufactured for and purchased by it, as aforesaid, only by the sale "for export" and shipment thereof into "said export territory" or by the lease thereof to motion-picture exhibitors for the purpose only of using such

motion pictures for giving exhibitions thereof in exhibiting or projecting machines licensed by the Licensor containing the inventions, or some of them, described and claimed in said Letters Patent Nos. 578185, 580749, 586953, 588916, 673329, 673992, 707934, 722382, 744251, 770937, 771280, 785205, and 785237, or in Letters Patent hereafter acquired or controlled by the Licensor; and will not use the same for the purpose of giving exhibitions thereof for profit, directly or indirectly; it being expressly understood and agreed by and between the Licensor and Licensee, however, that the Licensee shall be at liberty to give exhibitions of such positive motion pictures without profit, directly or indirectly, and to possible or prospective lessees or purchasers thereof; and the Licensee further covenants and agrees not to knowingly allow positive motion pictures manufactured for or purchased by it under this agreement to be used with any exhibiting or projecting machine not licensed by the Licensor under the Letters Patent mentioned in this paragraph, and that it may hereafter acquire or control; or one or more of them, except by and with the consent of the Licensor; and also to refrain from supplying such motion pictures manufactured for or purchased by it under this agreement, for use with any exhibiting or projecting machine, the license for which, under the aforesaid Letters Patent, or one or more of them, has been terminated, and the Licensee has been notified thereof by the Licensor; and also to refrain from supplying such motion pictures manufactured for and purchased by it under this agreement to any lessee who may loan or sublease such motion pictures and the Licensee has been notified thereof by the Licensor, or who may use such motion pictures for giving exhibitions thereof in exhibiting or projecting machines not licensed by the Licensor as aforesaid, or the license for which has been terminated and the Licensee has been notified thereof by the Licensor; and the Licensor covenants and agrees to promptly notify the Licensee and all other persons, firms, and corporations licensed under said reissued Letters Patent No. 12192 of the termination of any license for the use of any exhibiting

or projecting machines under the aforesaid Letters Patent, or any of them.

16. The Licensor and Licensee further mutually covenant and agree that if in any suit brought upon said reissued Letters Patent No. 12192 either of the claims of said reissued Letters Patent No. 12192 is held invalid by a court that last hears and decides such suit, or should be held by such court not to be infringed, then, and in any such case, the Licensee may at once terminate this agreement and the license thereby granted, by giving notice of its election so to do to the Licensor.

17. The Licensor and Licensee further mutually covenant and agree that by the expression "motion pictures" as used in the foregoing agreement is meant transparent or translucent tapelike film having photographs thereon of objects in motion.

18. It is further mutually covenanted and agreed by and between the Licensor and Licensee that, unless sooner terminated, as hereinbefore or hereinafter provided, this agreement and the license granted thereby shall take effect at the date hereof, and shall continue until June 20, 1911, but that the Licensee may renew this agreement and license thereafter from year to year upon the same terms, conditions, and stipulations as herein provided by giving notice to the Licensor on or before April 20 of each year, beginning with the year 1911, of the Licensee's election to so renew this agreement and license, and upon the giving of each such notice this agreement and the license thereby granted shall be considered and treated by the Licensor and Licensee as renewed for a period of one year, beginning June 20th of the year following such notice, except that the last renewal period shall be for the period from June 20, 1914, to August 26, 1919, the date of expiration of the Letters Patent No. 707934.

It is further mutually covenanted and agreed by and between the Licensor and Licensee that if, during said original term or during any such renewal period, either party should knowingly or through gross neglect or care-

lessness be guilty of a breach, violation, or nonperformance of its covenants, conditions, and stipulations, resulting in substantial injury to the other party, and should for the period of forty (40) days after notice thereof from the other party persist therein or fail to correct, repair, or remedy the same, then and in such case the party aggrieved may terminate this agreement by giving notice in writing to the guilty party of its intention so to do. It is, however, mutually covenanted and agreed by and between the Licensor and Licensee that if the guilty party should correct, repair, or remedy such breach, violation, or nonperformance of its covenants, conditions, and stipulations within the said period of forty (40) days after such notice, and should thereafter knowingly or through gross neglect or carelessness be guilty of a second breach, violation, or nonperformance of its covenants, conditions, and stipulations, resulting in substantial injury to the other party, then and in such case the party aggrieved may terminate this agreement by giving thirty (30) days' notice in writing to the guilty party of its intention so to do. Such termination of the agreement, however, shall not prejudice either party hereto in the recovery of damages because of any such breach, violation, or nonperformance by the other party hereto.

19. All notices provided for in this agreement shall be in writing and shall be given by delivering the same to the Licensor or Licensee, as the case may be, or to an officer of the Licensor or Licensee, as the case may be, or by depositing such notice, postage prepaid, in any post office of the United States, in a sealed envelope directed to the Licensor or the Licensee, as the case may be, at its last known post-office address, to be forwarded by registered mail.

20. It is mutually covenanted and agreed by and between the Licensor and Licensee that after notice of the termination of this agreement and the license granted thereby by either party, as provided for in paragraphs 16 and 18 of this agreement, and after the same have been terminated, no matter what the cause or manner of termination may be, neither

this license agreement, nor the fact that the Licensee has entered into or acted under it, shall be used in any manner, directly or indirectly, by or for the Licensors, its successors, assigns or legal representatives, or by or for others with its or their consent or permission, against Licensee, or the Licensee's successors or legal representatives, in any litigation, controversy or proceeding involving the Licensee or them or any other persons, firms or corporations, or in any other way, it being understood and agreed that upon such termination the positions and rights of the Licensors and Licensee shall be the same as if this agreement had not been made; provided, however, that the rights of neither party shall be prejudiced by such termination in the recovery of damages for any breach or other violation of this agreement by the other occurring prior to such termination.

In witness whereof, the parties hereto have caused this agreement to be executed by their officers duly authorized to perform these acts, the day and year first above written.

MOTION PICTURE PATENTS COMPANY,

By FRANK L. DYER, *President*.

GENERAL FILM COMPANY,

By J. J. KENNEDY, *President*.

Attest:

GEORGE F. SCULL,

Secretary.

EXHIBIT 8.

AGREEMENT BETWEEN GENERAL FILM COMPANY AND
EDISON MANUFACTURING COMPANY, APRIL 21, 1910.

1. Articles of agreement, made and entered into this — day of ———, 1910, by and between the Edison Manufacturing Company, a corporation organized and existing under the laws of the State of New Jersey, and having an office in the city of Orange in said State, party of the first part, and the General Film Company, a corporation organized and existing under the laws of the State of Maine, and having an office in the city, county, and State of New York, party of the second part; witnesseth that:

2. Whereas the party of the first part has been licensed by the Motion Picture Patents Company, of New York City, to manufacture motion pictures by the use of cameras under reissued Letters Patent No. 12037, dated September 30, 1902, Letters Patent No. 629063, dated July 18, 1899, and Letters Patent No. 707934, dated August 26, 1902, and containing the inventions of reissued Letters Patent No. 12192, dated January 12, 1904, ———, and to lease positive motion pictures so manufactured ——— by it (hereinafter referred to as "Licensed Motion Pictures") for use on projecting machines licensed by said Motion Picture Patents Company (hereinafter referred to as "Licensed Projecting Machines") under Letters Patent Nos. 578185, 580749, 586953, 588916, 637329, 673992, 707934, 722382, 744251, 770937, 771280, 785205, and 785237, owned by said Motion Picture Patents Company, covering motion picture projecting machines; and

3. Whereas, the party of the second part has been licensed by said Motion Picture Patents Company to lease such "Licensed Motion Pictures," but only on film of a greater width than approximately one (1) inch, from persons, firms and corporations licensed by said Motion Picture Patents Company to manufacture or manufacture and import such

"Licensed Motion Pictures," and to sublet the said "Licensed Motion Pictures" in certain territory (which, however, may hereafter be extended), to motion picture exhibitors for use on "Licensed Projecting Machines"; and has also been licensed by said Motion Picture Patents Company to have positive motion pictures (hereinafter included in the term "Licensed Motion Pictures") manufactured for it by certain of said licensees, including the party of the first part (and hereinafter referred to as the "Patents Company Licensees aforesaid") on film of the width aforesaid, embodying the inventions of said reissued Letters Patent No. 12192 from negative motion pictures made in foreign countries and which are procured by it from others than the "Patents Company Licensees aforesaid," and which positive motion pictures it shall own, and also to purchase positive motion pictures (hereinafter included in the term "Licensed Motion Pictures") manufactured in foreign countries, and to lease all said positive motion pictures to motion picture exhibitors for use by such exhibitors on "Licensed Projecting Machines"; and

4. Whereas, the party of the second part is desirous of leasing "Licensed Motion Pictures," on film of the width aforesaid, from the party of the first part for the purpose of subleasing the same to motion picture exhibitors, under its license aforesaid from the Motion Picture Patents Company;

5. Now, therefore, the parties hereto of the first and second parts do hereby covenant and agree as follows:

6. The party of the first part covenants and agrees that it will, during the continuance of this agreement, supply the party of the second part with as many copies of each "Licensed Motion Picture," released by the party of the first part, on film of the width aforesaid, as the party of the second part requires for the conduct of its business, and will so supply them at the same leasing prices and otherwise upon the same terms and conditions as it, at corresponding times, leases such "Licensed Motion Pictures" to other persons, firms, or corporations, and that it will not, during the continuance of this agreement, discriminate against the party of the second part, in favor of other per-

sons, firms, or corporations to whom it leases such "Licensed Motion Pictures," in filling orders for such "Licensed Motion Pictures," in terms of payment therefor or in any other way which might give, or tend to give, such other persons, firms, or corporations any advantage over the party of the second part.

7. The party of the second part covenants and agrees that it will, during the continuance of this agreement, lease from the party of the first part "Licensed Motion Pictures," on film of the width aforesaid, at the prices and upon the terms and conditions provided for in the last preceding paragraph, and that it will, on each Monday, make or mail payment to the party of the first part for all such "Licensed Motion Pictures," shipped by the party of the first part to the party of the second part, on the order of the latter, and for which the party of the second part has received invoices from the party of the first part, during the preceding week; and that it will use its best efforts to introduce the same to and extend the use thereof by motion-picture exhibitors using the "Licensed Projecting Machines," aforesaid; that for each sixty-two customers or the major fraction thereof that it serves during any two consecutive weeks during the continuance of this agreement from any place of business operated by it for the purpose of leasing and subleasing motion pictures among motion-picture exhibitors, it will lease from the party of the first part, during each such two consecutive weeks, and will distribute from each such place of business, one reel, of a subject or subjects released by the party of the first part not more than one month previously, of approximately one thousand (1,000) running feet of such "Licensed Motion Pictures," and that it will so lease such a reel for each such place of business during any such two consecutive weeks, even if its customers, which it serves from such place of business during such two consecutive weeks, do not aggregate sixty-two customers or the major fraction thereof; it being expressly covenanted and agreed, however, by and between the parties hereto that the party of the second part shall not be required to lease from the party of the first part more than eighty (80)

reels of approximately one thousand (1,000) running feet per reel of "Licensed Motion Pictures" in any two consecutive weeks; and further that it may lease "Licensed Motion Pictures" on film of the width aforesaid from other "Patents Company Licensees aforesaid" than the party of the first part, and sublet such "Licensed Motion Pictures" to motion-picture exhibitors.

8. The party of the second part further covenants and agrees that it will, in addition to the leasing prices hereinbefore referred to, pay to the party of the first part, at the end of each year during the continuance of this agreement, the following share of the net profit realized by it during that year from the subleasing and leasing, as aforesaid, of "Licensed Motion Pictures," to exhibitors and from the sale of "Licensed Projecting Machines," and from all other sources, to wit: Such a proportion of the balance, if any, of such net profit, remaining after deducting therefrom the dividend of seven per cent (7%) for that year on its issued preferred stock and an amount equal to a twelve per cent (12%) dividend on its issued common stock, as the number of running feet of "Licensed Motion Pictures" leased by it from the party of the first part during that year bears to the total amount of running feet of "Licensed Motion Pictures" leased by it from all "Patents Company Licensees aforesaid" during that year ("Licensed Motion Pictures" manufactured for or purchased by the party of the second part, as aforesaid, as well as "Licensed Motion Pictures" leased to it by "Patents Company Licensees aforesaid" produced from negatives made on its order, to be excluded).

9. It is mutually covenanted and agreed by and between the parties hereto that by "net profit," as used in the last preceding paragraph, is meant moneys remaining after deducting from the gross earnings and income of the party of the second part from "Licensed Motion Pictures" and "Licensed Projecting Machines" and from all other sources, all operating expenses connected with the business of the party of the second part.

10. It is mutually covenanted and agreed by and between the parties hereto that the yearly payments out of the bal-

ance of net profit provided for in paragraph hereof numbered 8 may, at the option of the party of the second part, be made wholly or partly by promissory notes of the party of the second part bearing interest at the rate of six (6) per cent per annum and each payable at a date not later than three years from the date on which the payment for which it is issued is due; provided, however, (a) that if, in any year it should make payments in this manner to the party of the first part, it shall for that year make payments in like manner to all of the "Patents Company Licensees aforesaid" from whom it may have leased "Licensed Motion Pictures" during that year and who may be entitled to share in the balance of net profit of that year provided for in paragraph hereof numbered 8; (b) that if in any year it should make such payments partly in cash and partly in promissory notes the cash shall be apportioned among the several "Patents Company Licensees aforesaid" according to the number of running feet of "Licensed Motion Pictures" leased by each during that year to the party of the second part, relatively to the total amount of running feet leased by all to the party of the second part during that year, and the notes shall be apportioned in like manner; and (c) that all notes issued by it in each year to the several "Patents Company Licensees aforesaid" in full or partial payment as aforesaid shall be alike as to form, date, rate of interest, duration and place of payment; shall be paid by it without preference to one payee over another; shall be fully paid by it before any cash payments are made by it in subsequent years to "Patents Company Licensees aforesaid" on account of their share as aforesaid of the balance of net profit for such years; shall be paid before any payment is made on the notes issued in such subsequent years to "Patents Company Licensees aforesaid" on account of such share of the balance of net profit; and shall share pro rata, according to their respective face values, in any money to be used by it for making partial payments on such notes.

11. It is further mutually covenanted and agreed by and between the parties hereto that, unless previously terminated as hereinafter provided, this agreement shall continue until

August 26, 1919, the date of expiration of the letters patent aforesaid No. 707934.

12. It is further mutually covenanted and agreed that if the license to the party of the first part referred to in paragraph hereof numbered 2 be terminated prior to August 26, 1919, the date of expiration of said letters patent No. 707934, or if the license aforesaid to the party of the second part to lease "Licensed Motion Pictures" from the party of the first part and other "Patents Company Licensees aforesaid" be terminated prior to August 26, 1919, the date of the expiration of said letters patent No. 707934, then and in either of such cases this agreement shall at once terminate.

13. It is further mutually covenanted and agreed by and between the parties hereto that if either party should knowingly or through gross neglect or carelessness be guilty of a breach, violation, or nonperformance of its covenants, conditions, and stipulations resulting in substantial injury to the other party, and should, for the period of forty (40) days after notice thereof from the other party, persist therein or fail to correct, repair, or remedy the same, then and in such case the party aggrieved may terminate this agreement by giving notice in writing to the guilty party of its intention so to do; it being, however, mutually covenanted and agreed by and between the parties hereto that if the guilty party should correct, repair, or remedy such breach, violation, or nonperformance of its covenants, conditions, and stipulations within the said period of forty (40) days after such notice, and should thereafter knowingly, or through gross neglect or carelessness be guilty of a second breach, violation, or nonperformance of its covenants, conditions, and stipulations, resulting in substantial injury to the other party, then and in such case the party aggrieved may terminate this agreement by giving thirty (30) days' notice in writing to the guilty party of its intention so to do. Such termination of the agreement, however, shall not prejudice either party hereto in the recovery of damages because of any such breach, violation, or nonperformance by the other party hereto.

14. It is further mutually covenanted and agreed that in case of the termination of this agreement as provided

for in paragraphs hereof numbered 12 and 13, or in case the party of the first part should become bankrupt, then at the end of the year in which either of these events occurs the party of the first part shall be entitled to such a proportion of the balance of net profit for that year, as hereinbefore defined, as the number of running feet of "Licensed Motion Pictures" leased by the party of the second part from it during that year bears to the total amount of running feet of "Licensed Motion Pictures" leased by the party of the second part from all "Patents Company Licensees aforesaid" during that year ("Licensed Motion Pictures" manufactured for or purchased by the party of the second part, as aforesaid, as well as motion pictures leased to it by "Patents Company Licensees aforesaid" produced from negatives made on its order, to be excluded).

15. All notices provided for in this agreement shall be in writing, and shall be given by delivering the same to the party of the first part or the party of the second part, as the case may be, or to an officer of the party of the first part or the party of the second part, as the case may be, or by depositing such notice, postage prepaid, in any post office of the United States, in a sealed envelope directed to the party of the first part or the party of the second part, as the case may be, at its last known post-office address, to be forwarded by registered mail.

16. It is further mutually covenanted and agreed by and between the parties hereto that any rights hereby granted by one party to the other are personal to and nonassignable by the latter without the consent in writing of the former.

In witness whereof, the parties hereto have caused this agreement to be executed by their officers duly authorized to perform these acts, the day and year first above written.

EDISON MANUFACTURING COMPANY,
By FRANK L. DYER, *Vice President*.

In the presence of—

J. J. KENNEDY,
WM. PELZER.

EXHIBIT 9.

REISSUED LETTERS PATENT 12192.

No. 12192.

Reissued January 12, 1904.

UNITED STATES PATENT OFFICE.

THOMAS A. EDISON, OF LLEWELLYN PARK, NEW JERSEY.

KINETOSCOPIC FILM.

Specification forming part of Reissued Letters Patent No. 12192, dated January 12, 1904.

Original No. 589168, dated August 31, 1897. Reissue No. 12038, dated September 30, 1902. Application for present reissue filed December 17, 1903. Serial No. 185597.

To all whom it may concern:

Be it known that I, Thomas A. Edison, a citizen of the United States, residing at Llewellyn Park, in the county of Essex and State of New Jersey, have invented a certain new and useful Improvement in Kinetoscopic Films (Case No. 928), of which the following is a specification.

The purpose I have in view is to produce pictures representing objects in motion throughout an extended period of time which may be utilized to exhibit the scene including such moving objects in a perfect and natural manner by means of a suitable exhibiting apparatus, such as that described in an application filed simultaneously herewith (Patent No. 493426, dated March 14, 1893.) I have found that it is possible to accomplish this end by means of photography.

In carrying out my invention I employ an apparatus for effecting by photography a representation suitable for reproduction of a scene including a moving object or objects comprising a means, such as a single camera, for intermittently projecting at such rapid rate as to result in persistence of vision images of successive positions of the object or objects in motion as observed from a fixed and single point of view, a sensitized tape-like film, and a means for so moving

the film as to cause the successive images to be received thereon separately and in single-line sequence. The movements of the tape-film are intermittent, and it is preferable that the periods of rest of the film should be longer than the periods of movement.

By taking the photographs at a rate sufficiently high as to result in persistence of vision the developed photographs will, when brought successively into view by an exhibiting apparatus, reproduce the movements faithfully and naturally.

I have been able to take with a single camera and a tape-film as many as forty-six photographs per second, each having a size measured lengthwise of the tape of one inch, and I have also been able to hold the tape at rest for nine-tenths of the time; but I do not wish to limit the scope of my invention to this high rate of speed nor to this great disproportion between the periods of rest and the periods of motion, since with some subjects a speed as low as thirty pictures per second or even lower is sufficient, and while it is desirable to make the periods of rest as much longer than the periods of motion as possible any excess of the periods of rest over the periods of motion is advantageous.

In the accompanying drawings, forming a part hereof, Figure 1 is a plan view, with the top of the casing removed, of a form of apparatus which I have found highly useful for the taking of the photographs. Fig. 2 is a vertical longitudinal section on line *x x* in Fig. 1. Figs. 3 and 4 are enlarged views of the stop mechanism of the photographing apparatus. Fig. 5 is a plan view of the shutter for the photographing apparatus, and Fig. 6 is a perspective view of a section of the tape-film with the photographs thereon.

Referring to the drawings, 3 indicates the transparent or translucent tape-film, which before the apparatus is put in operation is all coiled on a reel in the sheet-metal box or case 1, the free end being connected to an empty reel in the case 2. The film 3 is preferably of sufficient width to admit the taking of pictures one inch in diameter between the rows of holes 4, Figs. 2 and 6, arranged at regular intervals along the two edges of the film, and into which holes the teeth of

the wheels 5, Figs. 1 and 2, enter for the purpose of positively advancing the film. When the film is narrow, it is not essential to use two rows of perforations and two feed-wheels, one feed-wheel being sufficient. Said wheels are mounted on a shaft 6, which carries a loose pulley 7—that is, a pulley frictionally connected to its shaft and forming a yielding mechanical connection. This pulley is driven by a cord or belt 8 from a pulley 9 on the shaft 10, which shaft is driven by means of the beveled gears 11 12. The wheel 12 is preferably driven by an electric motor 13, which when the apparatus is in use is regulated to run at the desired uniform speed, being controlled by the centrifugal governor 14 and the circuit-controller 15 in a well-known manner. On the shaft 10 is another pulley 16, which is connected by a cross-belt 17 to a pulley 18, also frictionally connected to its shaft, and which carries the reel to which the tape is connected in casing 2. The film passes from the casing 1 through a slit formed by the edge 19 and the sliding door 20, which is normally thrown forward by the spring 21, Fig. 2, with sufficient force to clamp the film and hold it from movement. When the door 20 is retracted by pulling on the rod or string 22, which is connected to the arm 22', the film is liberated and allowed to advance. Film-case 2 is provided with a similar door, but the device for moving the door is not illustrated. This arrangement of the sliding door not only holds the film, but it tightly closes the casing, thus excluding light and protecting the sensitive film. The casings or boxes 1 2 are removable, so that they, with the inclosed film, may be taken bodily from the apparatus. The shaft 6, heretofore referred to, is provided with a detent or stop-wheel 23, the form of which is most clearly shown in Figs. 3 and 4. The wheel 23 is provided with a number of projecting teeth 24, six being shown, which teeth are adapted to strike successively against the face of the cooperating detent or stop-wheel 25 on the shaft 26, which is the armature-shaft of the motor or a shaft which is constantly driven by the motor. The wheel 25 has a corresponding number of notches 27 at regular intervals around its periphery. These notches are

of such size and shape that the teeth 24 can pass through them, and when the wheels 23 and 25 are rotated in the direction indicated by the arrows each tooth in succession will strike the face of wheel 25, thereby bringing the film absolutely to rest at the same moment that an opening in the shutter exposes the film, and will then pass through a notch, allowing the tape-film to be moved forward another step while it is covered by the shutter. . To avoid the danger of the wheel 25 moving so quickly that a tooth cannot enter the proper notch, a laterally-projecting tooth 29 is provided adjacent to each notch. When a tooth 29 strikes a tooth 24, the latter tooth will be guided by the tooth 29 into the adjacent notch 27.

30 is a detent spring or pawl to prevent backward movement of the wheel 23.

I prefer to so proportion the parts above described that the wheel 23 is at rest for nine-tenths of the time in order to give to the sensitized film as long an exposure as practicable and is moving forward one-tenth of the time, and said forward movement is made to take place thirty or more times per second, preferably at least as high as forty-six times per second, although the rapidity of movement or number of times per second may be regulated as desired to give satisfactory results. The longer interval of rest of the film insures a good impression of the object projected thereon and results in a picture having clean and sharp lines, since the film has sufficient time to become steady and overcome the vibration caused by the sudden and rapid motions of the feed mechanism. On the shaft 26 or on any suitable shaft driven by the motor is a revolving disk 31, serving as a shutter for alternately exposing and covering the sensitive film. This disk, which is continuously revolving, is provided with six or any other suitable number of apertures 32 at regular intervals around it near the edge, they being so arranged that one of the apertures passes directly between the camera-lens 33 and the film each time the film is brought to rest, the light-rays passing through the opening 33' and falling on the film half-way between the reels on which the film is wound.

34 is a device for adjusting the camera-lens toward or from the film, and 35 is a device by means of which the operator can focus the camera on the object to be photographed.

Although the operation has been partially indicated in the description of the apparatus, it will now be set forth more in detail.

The apparatus is first charged with a sensitive tape-film several hundred or even thousands of feet long and the motor is set in operation. Since the spring 21 causes the door 20 to clamp the film, as already described, the loose pulleys 7 18 slip without pulling said film along; but when a moving object—for example, a man gesticulating—is placed in the field of the camera and the handle 22 is pulled the film is released and the pulleys operate to pull the same along. At the same time the reel in case 2 is rotated to wind up the film, thus transferring it from the reel in case 1 to the reel in case 2. This movement is intermittent, the film advancing by very rapid steps, which are definitely and positively controlled by means of the peculiar detent or escapement described, and a photograph is taken after each step.

While I do not care to limit myself to any particular number of steps per second, there should be at least enough so that the eye of an observer cannot distinguish, or at least cannot clearly and positively distinguish, at a glance a difference in the position occupied by the object in the successive pictures, as illustrated in Fig. 7. A less speed in taking the pictures will cause a trembling or jerky appearance in the reproduced picture. When the movement of the object being photographed has ceased or the desired number of photographs has been obtained, the apparatus is stopped. The film is suitably treated for developing and fixing the pictures, when it is ready for use in an exhibiting apparatus. It will be observed that all the photographs on the film are taken through the same camera-lens, which results in such a uniformity of photographs as would be unattainable were the photographs taken through different lenses.

What I claim is—

1. An unbroken transparent or translucent tape-like photographic film having thereon uniform sharply-defined equidistant photographs of successive positions of an object in motion as observed from a single point of view at rapidly-recurring intervals of time, such photographs being arranged in a continuous straight-line sequence, unlimited in number save by the length of the film, and sufficient in number to represent the movements of the object throughout an extended period of time, substantially as described.

2. An unbroken transparent or translucent tape-like photographic film provided with perforated edges and having thereon uniform sharply-defined equidistant photographs of successive positions of an object in motion as observed from a single point of view at rapidly-recurring intervals of time, such photographs being arranged in a continuous straight-line sequence, unlimited in number save by the length of the film, and sufficient in number to represent the movements of the object throughout an extended period of time, substantially as described.

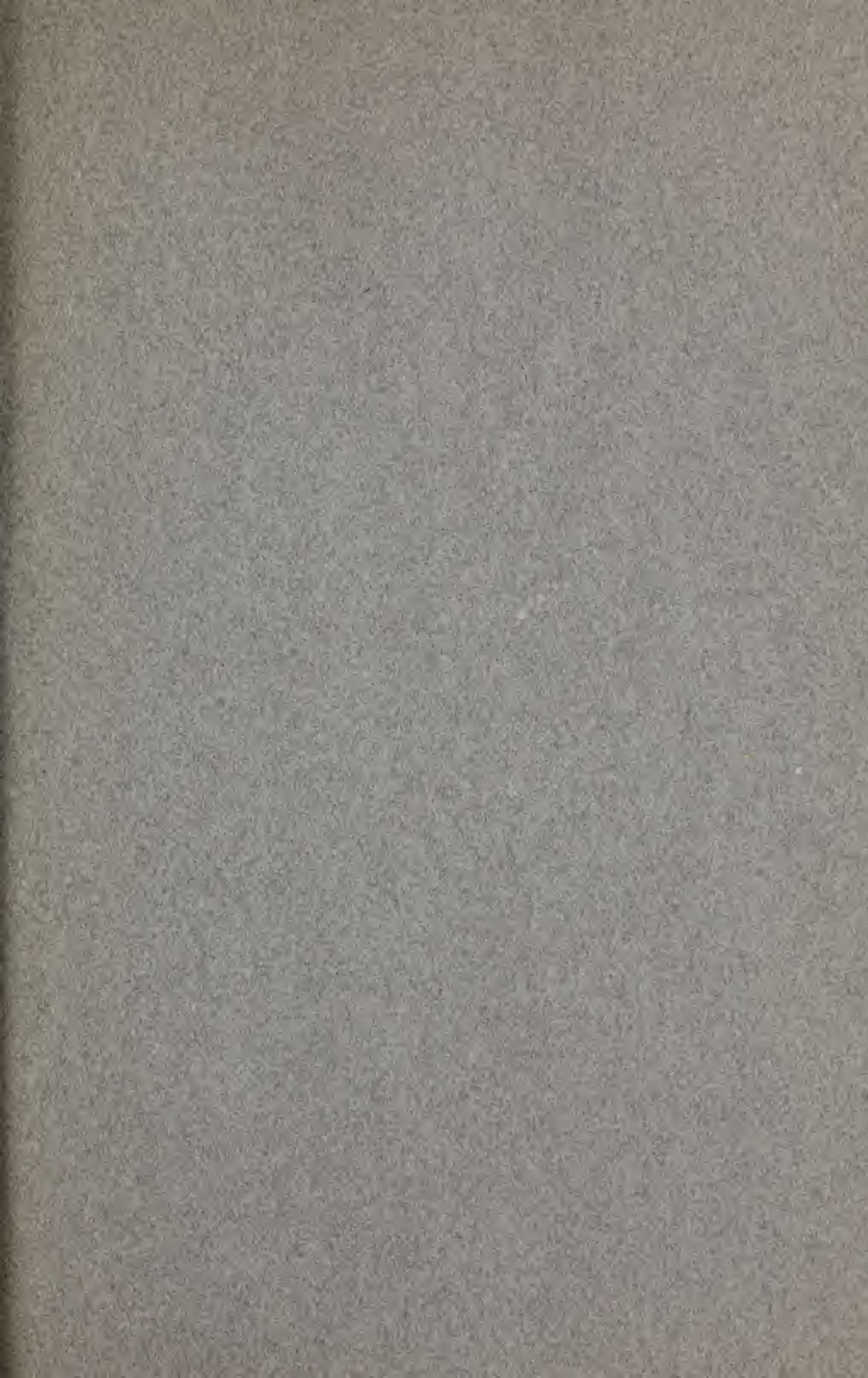
This specification signed and witnessed this 15th day of December, 1903.

THOMAS A. EDISON.

Witnesses:

FRANK L. DYER,
HARRY G. WALTERS.





UNITED STATES CIRCUIT COURT OF APPEALS
For the Second Circuit.

Motion Picture Patents Company,
Complainant-Appellant,
-vs-

Universal Film Manufacturing Company,
Universal Film Exchange of New York, Inc.,
and Prague Amusement Company, Inc.,
Defendants-Appellees.

On motion to dis-
miss appeal, or
for a stay, etc.

EXHIBIT 1.